IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO.: 2025-231389

In the matter between:

JUST SHARE NPC	First Applicant
AEON INVESTMENT MANAGEMENT (PTY) LTD	Second Applicant
FOSSIL FREE SOUTH AFRICA	Third Applicant

and

THUNGELA RESOURCES LIMITED	First Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Second Respondent

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REPLYING AFFIDAVIT

I, the undersigned,

TRACEY LAUREL DAVIES

state under oath that:

1. I am an adult female and the former executive director of the first applicant, Just Share NPC ("Just Share").

2. I deposed to the founding affidavit in these proceedings. I stood down from my position at Just Share on 28 February 2026, but remain both committed to the important issues advanced in this application, and authorised by Just Share to act as the deponent given my involvement in the matters that led to these proceedings.

3. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are both true and correct to the best of my knowledge and belief.

4. I have read the answering affidavit filed by Thungela in these proceedings. This affidavit is filed in reply.

5. I will use the same terms and abbreviations as defined in the founding affidavit.

INTRODUCTION

6. The question before this Court is whether sections 65(3) and 62(3)(c) of the Companies Act give shareholders the right to propose non-binding, advisory resolutions on climate change and related ESG matters and to require those resolutions to be tabled at annual general meetings of a company. The applicants submit that they do.

7. This legal question arises from Thungela's repeated refusal to circulate and table shareholder resolutions proposed by the applicants, who are shareholders in the company.

8. The applicants instituted these proceedings to confirm and enforce their section 65(3) and 62(3)(c) rights.

9. Thungela accepts that this Court has jurisdiction and that the applicants have standing to seek relief. It also does not deny that there is a live dispute between

the parties that raises a question of law of broader significance for companies and shareholders.

10. Nevertheless, Thungela continues to deny that shareholders have any rights to propose resolutions on climate change or other ESG matters, even if framed in non-binding terms. It seeks to denigrate these shareholder-proposed resolutions as mere "opinion polls" and parades a series of far-fetched hypotheticals, far removed from the facts of this case.

11. Thungela's defences present a series of contradictions:

    11.1. Thungela openly admits that climate change poses serious, material risks to its business and operations, yet it insists that its shareholders have no right to propose resolutions addressing those very risks, or to require the company to explain how it is managing them.

    11.2. Thungela further accepts that section 65(3) of the Companies Act is an "*essential section to avoid an abuse of power by the Board*",[1] yet it asserts a unilateral power to block any proposed resolution of which it disapproves.

    11.3. Thungela claims to be committed to engaging with shareholders and to taking their concerns seriously, yet it seeks to deny shareholders an essential legal mechanism to make their voices heard at shareholder meetings.

    11.4. Thungela asserts that non-binding, advisory resolutions have no legal force, yet it asserts that such resolutions would somehow override and usurp the management powers of the board with unspecified "*disastrous*" consequences.

[1] AA para 174.

11.5. Finally, Thungela suggests that its board has the power to propose and table non-binding resolutions for a vote by shareholders, yet, in the same breath it denies that shareholders have any right to vote on such resolutions.[2]

12. In what follows, I will expand on these irreconcilable tensions in Thungela's position by addressing the following issues in turn:

12.1. The implications of Thungela's interpretation of section 65(3).

12.2. The alleged alternatives to having shareholder-proposed resolutions tabled at AGMs.

12.3. The supposed "disruptive impact" of shareholder-proposed resolutions.

12.4. The fundamental constitutional rights at stake.

12.5. The role of shareholder activism under the King Codes.

12.6. The status of non-binding resolutions in our law, and their utility.

12.7. The scope of shareholders' voting rights.

12.8. The board's alleged unilateral discretion over the tabling of shareholder-proposed resolutions.

12.9. A paragraph-by-paragraph response to the allegations in the answering affidavit.

[2] AA para 178: "Thungela's MOI places the ability to table and vote on 'non-binding' or advisory resolution in the discretion of the board".

THE IMPLICATIONS OF THUNGELA'S INTERPRETATION

13. Thungela advances a narrow interpretation of section 65(3) of the Companies Act that seeks to deprive shareholders of any meaningful right to propose resolutions. Thungela advances three key contentions:

    13.1. First, shareholders have no right to propose or vote on any matters except those "*expressly identified in the [Companies] Act or a company's MOI*".[3]

    13.2. Second, shareholders have no right to propose non-binding resolutions because "*the concept of a 'non-binding resolution' of shareholders has never existed, and still does not exist, in our law*".[4]

    13.3. Third, the company's board has a unilateral power to screen the content of the resolutions and to block resolutions with which it disagrees.[5]

14. I will address these contentions in detail below, but at the outset it is necessary to appreciate their startling implications.

15. First, according to Thungela, shareholders would have no right to vote on matters concerning climate change, or any other important ESG issues that may arise within companies. This would mean that shareholders would be entirely barred from proposing or voting on, for example:

    15.1. A resolution calling on a company to disclose information on incidents of racial or sexual discrimination and harassment in its workplace, such as those proposed by shareholders at more than 30 listed companies in North America (including Amazon, Apple, and Walmart). The resolutions included proposals that companies conduct racial equity audits, and that companies disclose racial and gender pay metrics. A copy of a report

[3] AA para 104.
[4] AA para 92.
[5] AA para 112.

detailing racial equity on the shareholder ballot in 2023 is annexure "**TD45**".

15.2. A resolution encouraging greater efforts to achieve equal pay for men and women in a company.

15.3. A resolution seeking greater transparency on incidents of workplace injury and death, such as the resolution put forward in 2022 by shareholders in Amazon, urging the company to report on whether its health and safety practices give rise to any racial and gender disparities in workplace injury rates amongst its warehouse workers. Amazon asked the SEC to allow it to refuse to put the resolution to a vote, and the SEC declined. A copy of the SEC correspondence is annexure "**TD46**".

15.4. A resolution requiring a company to disclose information about pollution caused by a mining operation that has caused deaths and injuries in nearby communities.

15.5. A resolution requesting investigation into allegations that a company has been implicated in corrupt dealings and state capture.

15.6. A resolution encouraging a company to stop doing business with an oppressive regime committing ongoing human rights abuses, such as the famous resolutions proposed by US shareholders in the 1980s calling on companies to divest from the apartheid regime.

16. Second, according to Thungela, the only matters on which its shareholders could propose resolutions under section 65(3) are, effectively:[6]

16.1. the election and removal of directors; and

[6] AA para 115.

16.2. the approval of "*certain transactions*".[7]

17. Third, this would entail that, despite our progressive company law regime – including the express aim in section 7(a) of the Companies Act of "*promot[ing] compliance with the Bill of Rights*" – shareholders in South African listed companies have fewer rights to propose resolutions than shareholders in comparative jurisdictions, where non-binding shareholder-proposed resolutions are common. Indeed, it would entail that South Africa would have one of the most restrictive shareholder resolution regimes in the world.

18. Fourth, the effect is that shareholders would simply be passive voters in companies. They would have no power whatsoever to propose resolutions, barring a few limited exceptions, and may only vote on board-proposed resolutions.

19. Fifth, the core purposes of the Companies Act and the policy reform that preceded it (including balancing the rights and obligations of shareholders and directors, encouraging transparency and high standards of corporate governance, and recognising the significant role of companies in the social and economic life of South Africa) would be substantially undermined.

20. Sixth, the non-binding advisory votes previously tabled by Thungela and several other public South African companies on climate-related issues, as well as the non-binding resolutions tabled each year on say-on-pay, would be *ultra vires* and null and void.

THE ALLEGED ALTERNATIVES TO SHAREHOLDER RESOLUTIONS

21. Thungela argues that shareholders have other means available to raise their concerns, by engaging Thungela management, the public, or other shareholders.

[7] In terms of section 16(1)(c) shareholders may only propose an amendment of a company's MOI if those shareholders hold at least 10% of the voting rights that may be exercised on such a resolution.

The applicants deny that these are suitable replacements for shareholder-proposed resolutions. They are also not mutually exclusive alternatives.

22. Thungela specifically suggests that the opportunity for shareholders to raise questions or points of discussion at AGMs, in terms of section 61(8)(d) of the Act, does away with any need to propose and table resolutions under section 65(3) of the Act, and that raising questions for discussion is an equivalent substitute for tabling resolutions. That is mistaken:

    22.1. The time allotted for shareholders to raise questions for discussion is usually brief and perfunctory.

    22.2. These questions are typically met with glib or evasive responses from board members and there is no time allotted for any formal debate.

    22.3. There is also no opportunity to share a clear, written summary of the issues with shareholders in advance (as is the case of the explanatory document accompanying a resolution) and there is no opportunity for other shareholders to express their views through a vote.

23. For example, at the company's 2023 AGM, I asked when and whether Thungela intends to adopt a decarbonisation strategy with short-, medium-, and long-term targets. The high-water mark of the response from Thungela's then-CEO was that "Scope 3 is going to be quite a significant piece of work" and that the board "will look at Scope 3 and what [it] can do, in time". There was no further discussion or debate on this issue. A copy of this question-and-answer segment is annexed as "**TD47**".

24. In any case, engagements such as these and shareholder-proposed resolutions are not alternatives. Instead, shareholder-proposed resolutions are typically part of a broader process of engagement, that includes raising questions and engaging informally with the board and other shareholders.

25. Frequently, shareholder-proposed resolutions are the result of failed efforts to resolve concerns with companies and their boards via engagement, as company management and boards frequently ignore, downplay, or dismiss shareholder concerns raised during these engagements. The process of proposing, tabling and voting on these resolutions also has the effect of encouraging further debate and engagement between the company and other shareholders.

26. It is also practically impossible for a shareholder or group of shareholders to "canvass the views" of all the shareholders in a company as Thungela suggests the applicants should have done. It would take years to engage with its 39,900 shareholders. Even Thungela's own direct shareholder engagements reach only a fraction of the company's shareholders: at a meeting between the applicants and Thungela on 21 June 2023, the company's then-CEO informed the applicants that Thungela – even with its vast human and financial resources – had met with only around 200 shareholders in a recent roadshow, which is fewer than 1% of its shareholders.

27. These practical hurdles to engaging with shareholders are precisely the reason why shareholder resolutions exist: they are an efficient mechanism for canvassing the views of all shareholders in one place at one time, with limited administrative burden on either the company or the shareholders.

28. I also note that it is not the responsibility of shareholders to gather themselves for discussion and debate. As King V (and the Companies Act) makes clear, it is the board that is accountable for the quality of the company's relationship with its shareholders[8], and is responsible for ensuring that the company encourages proactive and constructive engagement with shareholders.[9] From a practical perspective this makes sense: the board holds the share register, has knowledge of the true owners of beneficially-held shares, and has the infrastructure and resources to distribute information to shareholders and gather them at a meeting.

[8] King V para 137.
[9] King V para 139.

Thungela's board should not be permitted to abdicate its responsibilities by passing the buck to shareholders.

29. Furthermore, "behind closed door" engagements can never be a replacement for the structured process of proposing, tabling and voting on shareholder-proposed resolutions. These alternative modes of engagement are complementary to the main forum, which is shareholders' meetings within the company structure, facilitated by the board. Issues which shareholders want to raise should not be sidelined to these private or off-record discussions. The Companies Act entitles shareholders to ventilate issues within the company structure and as shareholders in the company, rather than as third-party actors separate from it.

30. Shareholder proposed resolutions therefore offer advantages that other forms of engagement do not:

    30.1. Firstly, the Companies Act requires that shareholder-proposed resolutions and explanatory memoranda be shared with all shareholders. This ensures equality of information amongst shareholders, and that issues are raised with the company in an egalitarian manner.

    30.2. Second, shareholder-proposed resolutions cannot be ignored, whereas companies may refuse to engage with concerns and complaints raised outside of the annual general meeting. Even where the board is under an obligation to respond, questions and engagements raised at AGMs can be easily deflected or downplayed.

    30.3. Third, the tabling of resolutions at an AGM requires structured debate and voting, facilitating reasoned engagement on the issue at hand.

    30.4. Fourth, these debates and the ultimate resolutions are matters of record, visible to all shareholders and the public at large, whereas informal engagements often occur in private, and the discussions are unknown to the wider shareholder body and the investing public.

THE ALLEGED "DISRUPTIVE IMPACT" OF SHAREHOLDER PROPOSED RESOLUTIONS

The content of the resolutions

31. Thungela complains that the applicants want the board to act as no more than a "publishing agent" that has no right to respond to the matter. This is not the case.

32. The board is free to make known its views at the AGMs themselves, and to engage with the resolutions through an explanatory note in the notices of AGM. Standard Bank did so in its 2019 AGM notice, explaining that it did not endorse the climate change resolutions co-filed by Just Share. An extract from the notice of AGM is annexed as "**TD48**".

33. What the board may not do is bar shareholders from discussing and voting on a resolution simply because the board disagrees with its content or views these resolutions as inconvenient. The board's function under section 65(3) is procedural, not evaluative: it is required to table a competently-proposed resolution. It is not vested with a discretion to assess or approve its substance. The shareholders are the arbiters of the resolution's relevance and validity.

34. It is curious that Thungela trusts its shareholders to be competent to review and assess hundreds of pages of complex company documentation in deciding how to vote on all of the resolutions put to it by the company, but does not believe that these same shareholders are capable of exercising similar judgment in considering shareholder-proposed resolutions.

The timeline

35. For the very first time in these proceedings, Thungela takes issue with the timing of the proposed resolutions and alleges that this rendered it impossible to circulate and table these resolutions. This is raised as an afterthought, as Thungela's contemporaneous reasons for refusing the resolutions made no reference to timing or logistical difficulties.

36. Clause 30.4 of Thungela's MOI provides that notice of shareholder-proposed resolutions must be received by the company at least 15 business days before the shareholders' meeting is to begin. This is in line with the requirement in section 62(1)(a) of the Companies Act that a public company deliver notice of each shareholders' meeting at least 15 business days before it is to begin.

37. Each of the resolutions met this requirement. As is set out in the founding affidavit:

    37.1. Thungela received notice of the 2023 resolution 28 business days before the AGM on 31 May 2023.

    37.2. Thungela received notice of the 2024 resolution 25 business days before the AGM on 4 June 2024.

    37.3. Thungela received notice of the 2025 resolution 27 business days before the AGM on 5 June 2025.

38. Thungela's allegation that these filing dates afforded the board insufficient time to consider the resolutions before the deadline for issuing AGM notices is also false and misleading, relying on a patently incorrect calculation of the dates:

    38.1. In respect of the 2023 AGM, the latest date to dispatch the notice of AGM (or supplementary notice) to shareholders was therefore Wednesday 10 May 2023. The resolution was filed on Wednesday 19 April 2023, providing the company with **12 business days** to consider the resolution before the notice deadline, not three days as alleged.

    38.2. In respect of the 2024 resolution, Thungela's AGM was held on Tuesday 4 June 2024. The last date for shareholders to receive a notice of AGM (or supplementary notice) was therefore Monday 13 May 2024. The resolution was filed on Friday, 26 April 2024, giving the company **nine**

business days to consider it before the notice deadline, not two days as alleged.

38.3. In respect of the 2025 resolution, the 2025 AGM was held on Thursday 5 June 2025. The last date for shareholders to receive a notice of AGM (or supplementary notice) was therefore Thursday, 15 May 2025. The resolution was filed on Friday 25 April, giving the company **eleven business days** to consider it before the notice deadline, not three days as alleged.

39. It is highly objectionable that Thungela now chooses to describe the applicants' conduct, in complying with the timelines prescribed in the Act and the MOI, as "disruptive".

40. Moreover, it is disingenuous for Thungela to emphasise the number of days that the resolutions were filed before the company's notice of AGM was released. The date on which the notice of AGM will be released is information to which only Thungela is privy. In preparation, the filers of resolutions must make an educated guess based on the timing of previous years' AGMs. This is why the Companies Act and MOI set the deadline for filing resolutions in relation to the date of the AGM itself.

41. In its response to the proposed resolutions in 2023, 2024 and 2025, Thungela did not once raise any logistical challenges as part of the reason for its refusal to table the resolutions. At any time, it was open to Thungela to inform its shareholders of the date on which it intended to issue its AGM notice and to call for proposed resolutions. The company did not do so.

42. I also note that on each occasion, Thungela had sufficient time to obtain legal advice on the proposed resolutions and to procure a board decision founded on that advice. Its complaint about timing has, I submit, been contrived after the fact to bolster its opposition to this application.

The alleged administrative burden

43. Nothing in the entire administrative process complained of by Thungela – the alleged printing and posting of materials; the payment of JSE, directors', and professional fees; the meeting of the board to discuss AGM matters – is caused specifically by shareholders proposing a resolution. These are simply part and parcel of the holding of an AGM of a public company.

44. Thungela's references to the costs of printing and posting AGM materials are also misleading. All such materials, including the notice of AGM and the related suite of company reports, are distributed to shareholders electronically. As illustration, I attach an example of this electronic notice from the 2025 AGM as "**TD49**".

45. The insertion of a shareholder-proposed resolution therefore does not impose any burden of the nature or magnitude complained of. After all, each of the applicants' proposed resolutions and explanatory statements were no more than three pages in length. Thungela's claim that tabling these resolutions would have somehow incurred "irrecoverable costs of hundreds of thousands of Rand" is therefore misleading and inaccurate, and Thungela provides no supporting evidence for this claim.

46. At most, if a resolution is received after AGM notices have been dispatched but more than 15 days before the meeting is scheduled (which the MOI allows), Thungela would have to circulate a supplementary notice of AGM containing the resolution and supporting material. Even if an additional board meeting were required to consider the resolution, this would certainly not cost in excess of R100 000.00 as claimed (baldly) by Thungela.

47. Even if the filing of a shareholder-proposed resolution were to occasion some cost, this is by virtue of its status as a public, listed company, which is subject to numerous requirements, linked to its heightened obligations of transparency and accountability. A public company like Thungela, with tens of billions of Rands of annual revenue, is well placed to absorb costs of this kind. The advantages that

Thungela gains by being a publicly listed company come with the responsibility of scrupulous compliance with the law and the investment this entails.

The alleged disruption

48. Thungela also complains that the right asserted by the applicants would compel management and the board to engage with the matter on an urgent and *ad hoc* basis, irrespective of their other priorities and responsibilities. This is also not true.

49. Firstly, the particular right the applicants assert is the right to have their resolutions tabled and considered at the company's AGM. This is not an urgent or *ad hoc* event. It is a meeting that Thungela is obliged to convene each year, the date of which is fixed well in advance by the Companies Act and the MOI, including the timelines for the receipt of shareholder-proposed resolutions and the dispatch of notices. Accordingly, a shareholder-proposed resolution intended for a particular AGM is dealt with on the meeting's existing, pre-planned timetable. The applicants have never "demanded" any urgent or *ad hoc* engagement: in each year, the resolutions were filed far in excess of the prescribed time, affording Thungela substantially more time than the law and the MOI require.

50. Second, the consideration of a shareholder-proposed resolution does not require the convening of any additional board meeting. On Thungela's own version, the board meets at least four times each year, and in any event convenes a meeting to approve the notice of AGM and set the record date. The consideration of a shareholder-proposed resolution intended for that same meeting is no more than a further item on the agenda of a board meeting which the company would hold regardless. No additional meeting, and no additional cost, is required.

51. Third, to the extent that any decision is required between scheduled meetings, the Companies Act provides for it to be taken without any meeting being convened. In terms of section 74 of the Companies Act, a decision that could be taken at a board meeting may instead be adopted by written resolution of the

directors, given in person or by electronic communication. Thungela's MOI does not provide otherwise. Should the directors nonetheless prefer a meeting, this can be conducted by electronic communication in terms of section 73(3) of the Companies Act and clause 40.3 of Thungela's MOI.

52. Fourth, the supplementary-notice mechanism disposes of any residual suggestion of urgency. If a proposed resolution were received too late to be accommodated in the original notice of an AGM, there is no need for an "emergency" board meeting. The board could consider it in the ordinary course and the company could circulate a supplementary notice. By way of example, in 2025 Gold Fields Limited issued a supplementary notice of AGM six weeks after its original notice, accompanied by a new proposed special resolution. The supplementary notice was issued in good time before the AGM itself, which was held some three weeks later. The SENS announcement is annexure "**TD50**". The supposed difficulty of "immediacy" is therefore one of Thungela's own making; it does not arise from the right which the applicants assert.

53. Fifth, neither the fact that some directors are based abroad nor the fact that they serve on the boards of other entities assists Thungela. The AGM cycle affords ample notice to every director, wherever situated, and – as set out above – directors may in any event participate electronically. Thungela already has a practice of hosting hybrid and electronic meetings, which demonstrates that the physical location of a director is no impediment.

54. Sixth, Thungela's reliance on the meeting-specific fees that directors may charge for additional attendances is, in substance, the cost complaint recast in a different form. For the reasons given, no additional meeting need be convened; and even were one convened, such fees are an ordinary incident of the governance of a listed company and are negligible when measured against the company's resources.

55. Finally, Thungela's assertion that the exercise of the right "adds no strategic or other value to the company at all" conflates two distinct questions: whether the applicants are entitled to exercise the right, and whether the board agrees with

the substance of the resolutions they propose. The value and existence of the right cannot depend upon the board's endorsement of the use to which shareholders put it.

The alleged absence of remedy against overuse, misuse, or abuse

56. Thungela contends that the applicants' interpretation of section 65(3) exposes the company to over-use, misuse or abuse, against which it says there is no adequate remedy. The contention is speculative, unsupported by any evidence, and contradicted both by the practical realities of filing a resolution and by the actual experience of the provision in operation.

57. Firstly, and most strikingly, Thungela adduces no evidence of the abuse it postulates. Section 65(3) has been in force since the Companies Act came into operation on 1 May 2011, 15 years ago. In that time Thungela identifies not a single instance, whether involving itself or any other JSE-listed company, of the conduct of which it threatens: no spiral of competing resolutions, no disappointed proponent compelling immediate re-circulation, and no flood of frivolous filings. Had the applicants' interpretation in truth exposed companies to such abuse, some evidence of it would have materialised over the past decade and a half. There is none.

58. Second, the filing of a shareholder-proposed resolution is itself an exacting exercise that operates as a powerful natural constraint against the frivolous or repetitive use that Thungela fears. It is not an exercise undertaken lightly. A proponent must identify and persuade at least one other shareholder willing to be named as co-filer and to commit their time and reputations to the resolution. The resolution and its supporting statement must be carefully drafted and substantiated to comply with the requirements of section 65(4) of the Companies Act, which calls for expertise, research, and considerable time. The proponents must coordinate the timing of the filing while managing the diaries, mandates and approval processes of each co-filer, and must then engage with the company about the resolution, frequently over an extended period. These are significant administrative and resource burdens, and they fall on the proponents themselves.

Far from being a costless act that can be repeated on a whim, the filing of a resolution demands sustained effort and coordination. The suggestion that shareholders would file resolutions capriciously, or re-file them "within mere days", bears no relation to what the process in fact requires. It is also notable that the administrative burden Thungela complains of runs in both directions: the proponents bear at least as much of it as the company does.

59. Third, the hypothetical scenarios Thungela advances, of shareholders proposing resolutions outside of the AGM cycle, are unfounded. The proposed resolutions were directed at the AGM, which is an annual event. There is no mechanism by which a disappointed proponent can compel the company, "within mere days", to re-circulate a resolution. Any further resolution would be subject to the identical statutory timeframes and the identical filing process described above, and would only be directed at the next shareholders' meeting. A separate shareholders' meeting cannot be demanded by "any two shareholders" as Thungela contends, but only by the holders of at least 10% of the voting rights, in terms of section 61(3) of the Act. Thungela's picture of instant, repeated, and costless re-filing is a caricature that the statutory scheme does not permit.

60. Fourth, the applicants' conduct disproves the premise. As set out above, over three successive years the applicants filed three carefully prepared and substantiated resolutions, each compliant with the Act and Thungela's MOI, and each filed well in advance of the AGMs. That measured and compliant conduct is the antithesis of the abuse Thungela invokes, and it is the only concrete evidence before this Court of how the right is in fact exercised.

61. Fifth, Thungela mischaracterises the applicants' position in relation to the remedy under section 65(4). The applicants do not contend that urgent litigation is the appropriate first response to every resolution. The point is that the legislature, in section 65(5), deliberately allocated the determination of a resolution's validity to a court, and not to the board. The fact that a court remedy may carry some cost or inconvenience does not entitle the board to arrogate that screening power to itself. In any event, litigation arises only where the board elects to contest a resolution. In the ordinary course (as demonstrated by the Standard Bank

example set out above), a board that disagrees with a resolution simply records its view and recommends that shareholders vote against it, at no litigation cost whatsoever.

62. Thungela contends that the tabling of a resolution burdens the board, because the board may be duty-bound to provide its views, to inform shareholders of the resolution's effect, and to correct misleading content. The applicants do not suggest that the company is, or should be, a "mere administrative conduit". On the contrary, the very duties Thungela invokes are duties the board discharges by commenting on and engaging with the resolution, not by suppressing it. If the board considers a resolution to be harmful, one-sided, misleading or inaccurate, its remedy is to say precisely that to shareholders in the notice of AGM, to correct the record, and to recommend a vote against the resolution.

63. A board that applies its mind to a shareholder resolution and records its view is doing no more than good governance requires of it in relation to every matter placed before shareholders, including the many resolutions that the board itself tables each year. The duties Thungela cites therefore support the applicants' interpretation, under which shareholders and the wider market receive the board's considered view, rather than Thungela's interpretation, under which the resolution is never circulated at all.

64. Thungela's insinuation that the applicants' resolutions have "hidden substance" and ulterior motives is disputed. Each of the resolutions was properly formulated and supported by clear explanatory memoranda explaining their importance and merits. The Thungela board has not once explained why it disagrees with those resolutions. If the board held a different view on the resolutions' merits, its proper response was to convey that view to shareholders and to put it to a vote, not to veto the resolution and to suppress its circulation.

CONSTITUTIONAL RIGHTS ARE AT STAKE

65. Thungela seeks to argue that this matter has no bearing on constitutional rights. It is mistaken. The proper interpretation of section 65(3) and 62(3)(c) necessarily engages fundamental rights in the Bill of Rights. This issue will be elaborated on further in argument, but for now I note a few salient points in response to Thungela's arguments.

Freedom of expression

66. I am advised that our courts have held that freedom of expression not only protects the content of expression, but also its form. Thungela attempts to justify its attack on the applicants' freedom of expression by reminding this Court that they are free to engage with fellow shareholders through platforms other than the AGM. While this is true, the applicants are also entitled to express their views by proposing resolutions at AGMs, which are the central forum for shareholder expression in company law. A shareholder-proposed resolution, and its tabling at an AGM, is a constitutionally-protected form of expression.

67. Thungela's interpretation stifles freedom of expression, as it entails that shareholders are deprived of a key mechanism to communicate and receive information from fellow shareholders. Thungela's belief that shareholders should choose to express their views in other ways does not give Thungela the right to block shareholders from proposing and discussing their own proposed resolutions at AGMs, or to relegate shareholders to sidelined engagements.

Freedom of association

68. Thungela claims that the right contended for by the applicants would infringe on other shareholders' rights to freedom of association. I struggle to see how this is the case. Shareholders who do not wish to associate with the co-filers or with the resolutions themselves are free to vote against the resolutions and to express their dissent at the AGM. And if they do not wish to engage at all, they are not

required to: no shareholder is required to take any steps to disassociate themselves from the resolutions; they may simply abstain from voting.

69. If Thungela's argument were to be accepted, that would mean that the tabling of any resolution for discussion and voting at an AGM is an infringement on the right to freedom of association. This is clearly not the case.

70. Thungela also makes the puzzling argument that the act of voting is not required to give expression to the right to freedom of association. This is plainly false. Voting, whether in the company law context or otherwise, is the act of associating oneself with a certain position. It is in fact the primary way of exercising the right to freedom of association in a constitutional democracy, and in the corporate governance context.

Environmental rights

71. Thungela claims that the constitutional right to an environment that is not harmful to health or wellbeing is not implicated in this case. That is unsustainable.

72. Thungela's business practices, as a major producer and exporter of the single largest contributor to global climate change, undeniably implicate the constitutional right to an environment that is not harmful to heath or well-being. In its answering affidavit, Thungela itself admits that it has a duty to be a "*responsible custodian of the environment*" and to show "*environmental stewardship*".[10]

73. In that context, the rights of shareholders under section 65(3) to propose and table resolutions concerning these environmental commitments directly implicates the section 24 right. Public discussion, debate, and voting can only serve to enhance these environmental aims and to ensure transparency and accountability if Thungela falls short of its stated commitments.

[10] AA para 28.

74. All three of the resolutions presented by Just Share and its co-filers raised urgent and important environmental concerns over climate change risks and their impact on Thungela. Thungela refused to table those resolutions and blocked them from being circulated to other shareholders for consideration and a vote. That action, too, directly concerns environmental rights.

75. Resolutions such as these on climate change can promote corporate governance and accountability on environmental issues. Such resolutions are an important mechanism not only for shareholders to receive information on climate change risks facing businesses, but potentially to influence a company's decisions by demonstrating how seriously shareholders take the issue.

76. Thungela's repeated insinuation that the applicants' climate concerns are a niche interest, that has no support from the broader body of shareholders or the investing public, is mistaken. This is clear from concerns raised by Thungela's own shareholders:

    76.1. Stanlib stated in its 2023 Stewardship Report that one of its objectives in engaging with Thungela that year was understanding the risk of investing in coal mining given that fossil-based assets are becoming redundant as the global economy transitions to cleaner energy sources. I attach as annexure "**TD51**" an extract from Stanlib's 2023 Stewardship Report.[11]

    76.2. Coronation Fund Managers recognised in its 2022 Stewardship Report the need to phase out fossil fuels. Coronation engaged with fossil fuel companies in which it is invested, including Thungela, to whom it expressed its preference that the company not commit to any green-field coal investments. Coronation has increasingly emphasised climate-related disclosure by investee companies, including Amazon and East African Breweries. Annexure "**TD52**" is an extract from this Report.[12]

[11] see p. 19.
[12] see pp. 51-52.

76.3. In Momentum Investments' Stewardship Report, it notes that it strongly encourages investee companies to be transparent and disclose ESG-related information, as this ensures well-informed proxy voting decisions.[13] Momentum has a target of encouraging certain listed equity companies to have remuneration policies linked to climate-specific key performance indicators.[14] An extract from Momentum's Stewardship Report is attached as annexure "**TD53**".

77. Given the groundswell of investor concern over climate change, the real question, which remains unanswered is this: what does Thungela fear from allowing its shareholders to propose and vote on resolutions addressing these climate change risks? If Thungela truly believes that its existing policies and practices are beyond reproach, then it ought not fear transparent debate and voting by its shareholders.

78. In these circumstances, the section 24 right to a safe and healthy environment is undoubtedly advanced by fostering a stronger culture of corporate democracy and accountability on environmental issues.

SHAREHOLDER ACTIVISM AND THE KING CODES

79. In its answering affidavit, Thungela asserts that King IV does not promote shareholder activism and shareholder resolutions, and that King V has reduced the scope for shareholder activism as compared to King IV. Each of these points is incorrect and is addressed in turn.

King IV does address shareholder activism and resolutions

80. Thungela argues that King IV and V reject shareholder primacy, and that they adopt a stakeholder-centric approach which excludes shareholder accountability mechanisms. Thungela's interpretation of the King Codes positions stakeholder-

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[13] See p. 6
[14] See p. 37

inclusive governance and shareholder accountability mechanisms as incompatible concepts. This is not the case.

81. King IV recognises that shareholders qualify as internal stakeholders of a company, and that "internal stakeholders are always material stakeholders".[15]

82. Although King V places a stronger emphasis on stakeholders as a whole rather than shareholders in particular, it does not oust shareholders or diminish their legal rights. In fact, King V states that, while the board should appreciate that the company constitutes a nexus for the interests of a variety of stakeholders, it should "recognise the rights afforded to shareholders in law". This, I submit, includes the right to propose resolutions in terms of section 65(3) of the Companies Act.

83. Thungela correctly notes that King IV emphasises that "stakeholders" are the ultimate compliance officers. But King IV immediately acknowledges that "shareholders" are an essential part of the broader category of stakeholders. The shareholder group is not only an essential cog in the broader stakeholder community, but due to the distinct rights conferred on shareholders compared to other stakeholder groups, shareholders possess a higher degree of entitlement to serve as compliance officers on behalf of the vested interests of all stakeholders. The full paragraph from King IV, which is prominently headed "Shareholder Activism", reads as follows:[16]

> *"When it comes to the quality of an organisation's application of voluntary codes of governance principles and practices, it is said that its stakeholders are the ultimate compliance officers. Shareholders, as a particular sub-set of stakeholders, have certain rights that are enshrined in company legislation and that strengthen their ability to hold boards of companies to account. By virtue of this ability, shareholders also have the power to serve as proxies for wider stakeholder interests." (own emphasis)*

[15] King IV at 17 (glossary of terms).
[16] King IV at 32.

84. This paragraph does not support Thungela's claim that King IV recognises "unrestrained shareholder activism as destructive of, rather than beneficial to, balanced and effective corporate governance, functioning and decision-making".[17] This view is erroneous as it fails to acknowledge the broader governance framework reflected in King IV.

85. King IV distinguishes between internal and external stakeholders, with shareholders recognised as part of the former group. It makes clear that "internal stakeholders are always material stakeholders, but external stakeholders may or may not be material".

86. Clearly stakeholder inclusivity does not entail the exclusion of shareholder participation mechanisms. Rather, it broadens the governance considerations relevant to corporate decision-making and recognises the central role of shareholders as proxies for other stakeholders in a company, and as spokespersons for concerns that extend beyond narrow shareholder interests and intersect with broader stakeholder issues.

King V has not reduced the scope for shareholder activism

87. King V was published on 31 October 2025, after the three resolutions were filed; and it only came into operation on 1 January 2026, after this application was instituted. Nonetheless I address the prospective relevance and implications of King V, as it takes up a substantial amount of Thungela's answering affidavit.

88. Thungela is correct that King V, unlike King IV, does not expressly refer to shareholder activism. However, this does not mean that shareholders' rights are demoted, as Thungela suggests. The principles and structures that support shareholder activism remain intact in King V.

89. Principle 13 in King V replaced Principle 16 in King IV on a stakeholder-inclusive approach to governance. Both Principles include a section on stakeholder

[17] AA para 41.

engagement – and in fact, the section on stakeholder engagement in King V is more robust than that in King IV.

90. Principle 13 codifies that boards have a duty to recognise the rights afforded to shareholders in law, which is not a stipulation in Principle 16. It also preserves the principle that the board should encourage the company to ensure "proactive engagement with shareholders, including at the AGM and other shareholder meetings" and adds that these engagements must also be constructive.

91. Accordingly, the fundamental principle has not changed: shareholders are still key stakeholders, and retain their unique and essential role within the broader body of stakeholders, including their role as proxies for a broader constituency. The approach in King V is indeed stakeholder-inclusive, but this does not negate the essential role of the shareholder. King V maintains and strengthens the board's duty to engage with shareholders, which promotes the wider interpretation of section 65(3) of the Companies Act as advanced by the applicants.

Guidelines for New Company Law

92. Thungela asserts that the applicants' approach to the interpretation of section 65(3) "*runs entirely contrary to the separation of management and ownership which has, for over a century, informed the distinction in duties and powers between the different corporate role-players of the Board and shareholders*".[18]

93. The applicants deny that the right of shareholders to propose and vote on non-binding, advisory resolutions under section 65(3) in any way usurps the management powers of the board under section 66(1) of the Companies Act.

94. In any event, any limitation on those board powers is sanctioned by the Companies Act itself: section 66(1) of the Act is clear that the board's powers to

[18] AA at para 113.

manage the affairs of the company apply "*except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.*"

95. Moreover, Thungela's appeals to a century of tradition overlook the modernising purpose of the Companies Act, which has the express purpose, in section 7(i), of "*[balancing] the rights and obligations of shareholders and directors within companies*".

96. The Department of Trade, Industry, and Competition's 2004 policy paper that set the reform framework for the Companies Act bears important reference. Relevant extracts from this document are attached as annexure "**TD54**". The introductory section in this policy paper captures its modernising goals:[19]

> *"The domestic and global environment for enterprises has changed markedly since the 1970s. Corporate structures and financial instruments have undergone significant developments. Many old concepts have been abandoned or modified and new concepts have been developed. We now live in a world of greater globalisation, increased electronic communication, greater sensitivity to social and ethical concerns, fast changing markets, greater competition for capital, goods and services. South Africa cannot afford to be left behind. There is a growing recognition by companies and governments that there is a need for higher standards of corporate governance and ethics and greater interdependence between enterprises and the societies in which they operate. A number of corporate failures in South Africa and other jurisdictions have revealed serious defects in the prevailing standard of corporate governance and the administration of the law and have resulted in investors suffering extensive losses."*

97. The paper also speaks to aligning company law as part of South Africa's constitutional dispensation, and the need for modernisation. Notably, it recognises that an important part of the company law review was to "*ensure that directors are made as accountable to shareholders as practicable… the review will examine voting agreements and other impediments to the free use of*

[19] South African Company Law for the 21st Century, Guidelines for Corporate Law Reform, GN 1183, GG 26493, at page 13.

shareholder votes to appoint, remove and replace directors. In addition, significant emphasis will be placed on the need for disclosure and access to information".[20]

98. This call for modernisation concludes with the following declaration:[21]

> *"These factors should be reviewed extensively with a view to balancing access to company information to promote greater shareholder activism, the enforcement of rights and the avoidance of excessive or frivolous litigation."*

99. While this policy paper proposes that a company should have as its objective the conduct of business activities with a view to enhancing the economic success of the corporation, taking into account, as appropriate, the legitimate interests of other stakeholder constituencies[22] – and rightly so, according to the applicants – it also explicitly addresses shareholder and investor protection. The four basic rights of shareholders are described, inclusive of:[23]

    99.1. the right to capital, including residual capital after winding up;

    99.2. the right to income, namely dividends and other forms of distributions;

    99.3. the "*inalienable*" right to vote that allows shareholders to "*have a say*" in the companies they are invested in; and

    99.4. the right to information, including both the right to receive information and access it.

100. The policy paper deferred the ambit of these rights for determination in legislation, with the exception of the rights to vote and receive and access information, which are categorised as absolute. It is also instructive that it is "*particularly important*

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[20] Page 17.
[21] Id.
[22] Page 25.
[23] Pages 35-7.

that effective remedies are in place for shareholders and investors to enable them to exercise their rights".[24]

101. All considered, the welcome shift to a stakeholder-centric lens for corporate entities has not curtailed the fundamental rights of shareholders. It has certainly not curtailed the absolute rights to vote and receive information.

THE STATUS AND UTILITY OF NON-BINDING RESOLUTIONS

102. Thungela contends that there is no such thing in our law as a non-binding resolution. It is mistaken, for reasons that will be addressed comprehensively in argument.

103. For present purposes, it suffices to address four points.

104. First, this contention clearly contradicts Thungela's own application of non-binding advisory resolutions on remuneration matters during its AGMs from 2023 to 2025.

104.1. Listed in the "ordinary resolution" section of its AGM notices, the Thungela board has itself proposed "non-binding ordinary resolutions" for shareholders to approve its remuneration policy and its implementation reports.

104.2. The 2023 and 2024 AGM notices both state that "the non-binding votes enable shareholders to express their views on the Company's remuneration policy and on the implementation thereof". Relevant extracts from these notices are annexed as "**TD55**" and "**TD56**". Thungela's own approach therefore contradicts its assertion that non-binding advisory votes sit in a separate class that are not resolutions.

[24] Id.

105. Say-on-pay votes are a recurring example of how companies treat non-binding shareholder resolutions: every year, there are examples of listed companies which receive less than the 75% shareholder approval threshold on their remuneration policies and/or remuneration implementation reports. However, many companies do not make any significant changes to these policies and/or reports as a result of these votes against them. For example, more than 25% of shareholders voted against Sibanye Stillwater Limited's remuneration implementation report in 2022, 2023 and 2024; the same was true for Truworths Limited in 2023, 2024 and 2025.

106. Second, such non-binding resolutions are common at other JSE-listed companies. As Thungela correctly highlights in its answering affidavit, Sasol and multiple South African banks have tabled non-binding shareholder resolutions.

107. Third, and relatedly, such resolutions have been tabled in relation to climate- and climate-related issues. The Sasol board, in its 2025 AGM notice, proposed a non-binding advisory resolution to endorse the company's climate change mitigation and adaptation strategy and management approach. The relevant extract from the AGM notice is annexure "**TD57**". Nedbank, at its 2020 AGM, passed an ordinary resolution adopting and publicly disclosing an energy policy; and reporting on the company's approach to measuring, disclosing, and assessing its exposure to climate-related risks. The relevant extract from the minutes of the AGM is annexure "**TD58**".

108. Fourth, in relation to remuneration matters, Thungela is mistaken in claiming that so-called "so-on-pay" resolutions are not properly classified as company resolutions. Section 30A of the Companies Act explicitly provides that these resolutions be approved by shareholders by an "ordinary resolution". The fact that King V and the JSE Listings Requirements refer to "non-binding advisory votes" on say-on-pay by shareholders at an AGM does not negate the fact that they are resolutions.

109. Thungela claims that section 30A and 30B will give binding, legal force to these resolutions, with the result that they will no longer be non-binding. The fact that

the legislature has now seen fit to prescribe the legal consequences of these resolutions does not entail, however, that non-binding resolutions are foreign to our law.

110. Lastly, in relation to the effect of non-binding resolutions, Thungela points to a shareholder-proposed non-binding resolution co-filed by Just Share and Aeon ahead of Standard Bank's 2022 AGM, which was subsequently passed by its shareholders. Thungela claims that Just Share's call for compliance with this resolution "lays bare the fiction" that non-binding resolutions are in fact intended to be binding. This is not true and is a mischaracterisation of that engagement.

111. As set out in Just Share's June 2025 article, annexed to the answering affidavit,[25] the tabling of that resolution was preceded by an agreement with the board of Standard Bank, and an undertaking from the board as to what it viewed was feasible in terms of the content proposed by the co-filers. The co-filers had agreed to amend the content of the resolution so that the board would commit to Standard Bank achieving its requirements if a majority of shareholders voted in favour of it. 99.7% of shareholders voted in favour of the resolution. It was on this basis that Just Share, on behalf of the co-filers, alleged that Standard Bank had reneged on its undertaking to shareholders and requested an explanation. The non-binding nature of a shareholder resolution does not mean that a board is exempt from criticism when it ignores the views of its shareholders.

THE SCOPE OF SHAREHOLDERS' VOTING RIGHTS

112. Thungela is equally mistaken in claiming that shareholders only have rights to vote on resolutions that are expressly provided for in the Companies Act. This is a question of law which will be addressed further in argument, but I point out briefly why Thungela is plainly wrong:

[25] AA annexure AA14.

112.1. Section 37(2) of the Companies Act states that each issued share of a company has associated with it "one general voting right" except to the extent provided otherwise by the Act or the company's MOI.

112.2. Clause 11.2 of Thungela's MOI states that each issued share entitles its holder to vote on "*any matter to be decided by Shareholders of the Company*".

112.3. Clearly the default position in law and in terms of Thungela's own MOI is that shareholders are entitled to vote on a matter unless they are specifically precluded from doing so.

113. I also point out that Thungela's position departs from its own practices. Thungela has itself proposed non-binding resolutions, on its remuneration policy as a "non-binding ordinary resolution" even prior to this being required following the recent amendments to the Companies Act. Extracts from its 2023 and 2024 AGM notices are annexed as "**TD55**", and "**TD56**", and its 2022 AGM notice is annexed as "**TD59**". Other companies have done the same, including on climate change-related proposals.

114. This begs the question: If shareholders are entitled to exercise voting rights on these board-proposed resolutions, what conceivable basis exists to preclude them from proposing their own non-binding resolutions on the same matters? The answer, I submit, is none.

115. Three salient points will be elaborated on in argument.

116. Firstly, I reiterate that Thungela has applied the common non-binding advisory resolution scheme for its remuneration policy and report in accordance with King IV. Notwithstanding the existence of a dedicated board subcommittee for the exercise of fiduciary duties, remuneration governance is enhanced through a non-binding shareholder resolution and engagement with shareholders at AGMs, in addition to other modes of interaction available to shareholders on a more regular basis. This multifaceted exchange between the board and shareholders

on remuneration – which exists within the ESG realm – is typical in not only Thungela's governance environment, but that of JSE-listed companies in general.

117. Second, climate risks impact Thungela's core operations, and pose a material vulnerability in its business. Thungela recognises this: it is common cause that the company views climate risk management as a priority in its ESG policy and reporting. Shareholders should have every right to require the company to disclose information relating to such a significant risk to their investments. Climate matters warrant direct engagement between the board and various stakeholders, but shareholders in particular are well within their rights to vote on these issues.

118. Third, in the context of the fiduciary duties of Thungela's board (or the board of any public company) and the purposes in section 7 of the Companies Act, a wide interpretation of section 65(3) is not only the correct legal position but also enables the prudent exercise of fiduciary duties.

THE ALLEGED UNILATERAL DISCRETION OF THE BOARD

119. Thungela asserts that its board retains the unilateral discretion to screen the content of proposed resolutions and to reject resolutions which it believes may be invalid. It contends:[26]

> *"When a resolution is proposed by shareholders the content of the resolution always needs to be considered. The Board needs to determine whether a shareholder's resolution purportedly proposed in terms of section 65(3) of the Act, as read with a company's MOI, could be an attempt by shareholders to usurp the powers of the Board. Although section 65(3) of the Act does not in express terms permit the Board to consider this and make this determination, it is clear that the Board not only has a right to make this determination but also has a fiduciary duty to make this determination."*

[26] AA para 112.

120. As Thungela admits, section 65 of the Companies Act does not expressly confer any such powers on the board. Instead, section 65(5) of the Act is clear that the board's remedies are to approach a court: it cannot take the law into its own hands by blocking resolutions merely because it believes that they may be invalid.

121. Thungela's contentions are also fundamentally inconsistent with its acknowledgment that section 65(3) is an "*essential section to avoid an abuse of power by the Board*".[27] Quite how Thungela squares its alleged unilateral power to block resolutions with this acknowledgment is never explained.

122. Thungela's reliance on the board's powers under section 66(1) of the Companies Act is also misplaced. There is nothing in section 66(1) that purports to override the express rights granted to shareholders under section 65(3). These submissions will all be developed further in argument.

RESPONSES TO INDIVIDUAL PARAGRAPHS IN THE ANSWERING AFFIDAVIT

123. In what follows, I address individual allegations contained in the answering affidavit, to the extent necessary. I will not address every allegation, including the incorrect assertions of law that will be addressed in argument. Any allegation which is not addressed, and which is inconsistent with what is stated above and in the founding papers must be taken to be denied.

Ad paras 1 – 4

124. Save to deny that all allegations in the answering affidavit are true and correct, I admit the allegations in these paragraphs.

Ad para 5

[27] AA para 174.

125. While the second applicant, Aeon, does not itself hold shares in Thungela, Aeon has the status of a shareholder in terms of section 57(1) of the Companies Act, as it is entitled to exercising the voting rights attached to the shares. Thungela does not dispute Aeon's standing.

Ad para 6 (Introduction)

126. I deny the allegations in this paragraph. The applicants seek nothing more than to hold Thungela to its obligations under section 65(3) of the Companies Act and its own MOI.

Ad para 7

127. I admit the allegations in this paragraph.

Ad para 8

128. I deny that the applicants' proposed resolutions are "not resolutions in law" and refer to what I have stated above in this regard.

Ad para 9

129. I admit that shareholder resolutions and board resolutions reflect formally adopted positions of the shareholders of a company. There is nothing in the Companies Act or Thungela's MOI that precludes shareholders from formulating those positions in non-binding, advisory terms to give the board guidance on the shareholders' views.

Ad paras 10 – 11

130. I deny that the applicants seek to "force" other shareholders to consider their "opinion poll" and vote thereon. What the applicants seek to enforce is their right in terms of section 65(3) of the Companies Act.

Ad para 12

131. I deny that this matter does not engage any constitutional rights and refer to what I have stated above in this regard.

Ad para 13

132. The primary focus of this application is Thungela's breach of its obligations and the shareholders' corresponding rights under the Companies Act.

133. I admit that the interpretation of section 65(3) contended for by the applicants would apply to shareholder-proposed resolutions generally. This is a legal question of broader public importance that will provide guidance for resolving similar disputes between shareholders and companies in future.

Ad paras 14 – 16

134. I deny the misleading characterisation of the applicants' case in these paragraphs. Thungela seeks to rewrite section 65(3) of the Companies Act to deprive shareholders of rights that they are expressly granted in statute.

Ad paras 17 – 19

135. While I again object to Thungela's characterisation of shareholder-proposed resolutions as "opinion polls", I admit the allegations in these paragraphs.

136. I refer to what I have said above regarding the availability of alternative mechanisms for shareholder engagement. These forms of engagement are not mutually exclusive. Moreover, shareholder proposed resolutions confer advantages and protections which informal engagements do not.

Ad para 20

137. I again deny the misleading characterisation of the applicants' case. This case concerns the rights of shareholders to propose resolutions on climate change and related ESG issues, which are of critical relevance to the affairs of a company.

Ad paras 21 – 25

138. I note the structure of the answering affidavit.

Ad paras 26 – 30 (What this case is not about)

139. I note Thungela's acceptance of its obligations of environmental custodianship and stewardship, its recognition of the risks of climate change, and its publicly-stated commitments to reduce its emissions.

140. This again demonstrates the contradiction in Thungela's stance: it accepts the risks of climate change, while simultaneously insisting that its shareholders have no right to propose resolutions addressing those very risks, or to require the company to explain how it is managing them.

141. Thungela's interpretation of the Companies Act therefore undermines shareholders' ability to ensure that the company is complying with its climate change obligations and meeting environmental obligations and commitments more broadly – including its stated commitment to achieving net-zero carbon emissions by 2050.

Ad para 31

142. Save to admit that Thungela has invited the applicants to meet to discuss their climate change concerns and that meetings occurred in some instances, I deny these allegations. Informal, back-room engagements with management and the board in general terms are no replacement for shareholder proposed resolutions on specific matters that are discussed and debated openly at shareholder

meetings. It also became apparent during these engagements that Thungela would not reconsider its approach to section 65(3) of the Companies Act.

Ad para 32

143. I admit that the proper interpretation of section 65(3) has broader public importance. In light of Thungela's admission, its denial of the applicants' public interest standing is difficult to reconcile.

Ad para 33

144. I again deny the characterisation of the applicants' case advanced in this paragraph.

144.1. The applicants merely seek to enforce their rights under section 65(3) of the Companies Act, which entitles two or more shareholders to propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights, and to require that the resolution be submitted to shareholders for consideration at the next shareholders meeting.

144.2. The position adopted by Thungela is to deny that shareholders have any right to propose resolutions except for the small number of matters that are expressly provided for in the Companies Act and its MOI – confined to the appointment and removal of directors or the approval of certain transactions.

Ad paras 34 – 36

145. I deny the allegations in this paragraph. It is not the applicants that give shareholders wide powers to vote on a wide range of subject matters, but the provisions of the Companies Act and Thungela's MOI.

145.1. The Act gives shareholders a general voting right, and entitles Thungela, in its MOI, to limit the subject matter on which different classes of shareholders are entitled to vote (and, accordingly, propose resolutions).

145.2. Thungela has elected not to impose any such limitations in its MOI.

145.3. Moreover, the applicants in this case do not ask this court to grant a general declaratory order entitling all shareholders of all companies to propose resolutions on any subject matter, without qualification.

145.4. Instead, the declaratory relief sought in this matter is narrowly confined to the rights of the applicants, as Thungela shareholders, to propose non-binding resolutions on environmental, social and governance (ESG) matters, including climate change, under section 65(3) of the Companies Act and Thungela's MOI.

Ad paras 37 – 50

146. I have addressed the relevant principles in King IV and King V in detail above. I deny the contents of these paragraphs to the extent that they are inconsistent with these documents and what is stated above.

Ad para 51 (The disruptive impact of the resolutions)

147. I deny the alleged disruptive impact of the proposed resolutions, which allegations are presented as an after-the-fact justification that is not found in any of the reasons offered by Thungela for refusing the resolutions at the time.

Ad para 51.1

148. I deny the allegations in this paragraph and refer to what I have stated above.

Ad para 51.2

149. I admit the dates on which the resolutions were delivered to Thungela. I deny the compressed time periods as alleged and refer to the correct time periods as set out in paragraphs 37 to 38 above.

Ad para 52

150. I deny the allegations in this paragraph and refer to what I have stated above regarding the alleged administrative burden which the tabling of the resolutions would have occasioned.

Ad paras 53.1 – 53.3

151. I deny Thungela's mistaken calculation of time periods in these paragraphs, which are false and misleading. I refer to the correct time periods set out in paragraphs 37 to 38 above.

152. I reiterate that in each of 2023, 2024, and 2025, the applicants delivered the resolutions to Thungela well within the 15 business day deadline prescribed by the Companies Act and the MOI.

Ad paras 53.4 – 53.4.7

153. I deny the allegations in these paragraphs, for the reasons set out in detail above. I specifically deny that it would have been "*impossible to dispatch the applicants' resolution and supporting material*".

    153.1. No such allegations of impossibility were made at the time in Thungela's reasons for refusing the three resolutions.

    153.2. Moreover, I repeat that only Thungela has knowledge of the date on which it will issue the notice of AGM. Shareholders are only informed of the AGM date once the notice is issued. In preparation, the filers of resolutions must make an educated guess based on the timing of previous years' AGMs. This is why the Companies Act and MOI set the

deadline for filing resolutions in relation to the date of the AGM itself, not the date on which Thungela gives notice of the AGM.

153.3. It would have been a simple matter for Thungela to give shareholders advance notice of when it intended to distribute its AGM notice and packs and to invite shareholders to submit proposed resolutions before that date. Thungela did not do so.

153.4. Even if the resolutions and supporting materials could not have been dispatched with the original AGM notices, through no fault of the applicants, this does not justify Thungela's non-compliance with its obligations and its violation of the MOI.

153.5. It would also have been a relatively simple matter for Thungela to issue a supplementary notice, containing the two-page resolutions and explanatory memoranda.

153.6. I repeat that Thungela is able to, and does, distribute all such materials to its shareholders electronically, including the notice of AGM and the related suite of company reports. Thungela's allegations regarding the volumes of printing and postage, supposedly as its only means of shareholder communication, are therefore contrived.

Ad paras 54 – 55

154. I deny the allegations in this paragraph.

154.1. The right to call a separate shareholders' meeting, outside of the AGM, cannot be exercised "on demand" by a shareholder, but only by the holders of at least 10% of the voting rights, in terms of section 61(3) of the Act.

154.2. Therefore the spectre that Thungela conjures of a company being forced to circulate every shareholder-proposed resolution, on demand, at any

time, using the method of a shareholder's choosing, simply does not arise.

Ad paras 56.1 – 56.3

155. I deny the allegations related to costs and disruption in these paragraphs, and refer to what I have stated above.

Ad para 56.4

156. I deny the allegations in this paragraph, including the quotation, which appears in neither the Financial Markets Act nor the JSE Listings requirements.

157. In any event, misleading or deceptive information contained in a proposed resolution would likely be in breach of the formal requirements of section 65(4) of the Companies Act, for which section 65(5) of the Companies Act prescribes clear remedies by going to court to prevent the resolution from being tabled.

Ad paras 56.5 to 56.7

158. I again deny that the applicants have ever suggested that the board is a mere "administrative conduit" for resolutions.

158.1. The board is perfectly entitled to make its views known on a proposed resolution, ahead of the AGM, to allow shareholders to exercise an informed vote.

158.2. What the board cannot do is to exercise a unilateral veto, as Thungela has done here, merely because it disagrees with a resolution.

Ad para 57

159. I note the substance of Thungela's argument and interpretation, and again deny that it has any merit. This is a matter for argument.

Ad paras 58 – 65

160. I deny the allegations in these paragraphs, for the reasons stated above. I specifically deny that the interpretation contended for by the applicants has the potential to conflate distinct roles or usurp the powers of the board. This, too, will be addressed further in argument.

    160.1. The right of shareholders to express their views through non-binding, advisory resolutions is perfectly consistent with the board's management authority.

    160.2. I further note the contradictory positions advanced by Thungela: on the one hand, it contends that non-binding shareholder resolutions have no legal effect but, on the other hand, it alleges that these resolutions will somehow have a destructive effect on the management of the company.

Ad paras 66 – 68 (Rights that are freely available to the applicants)

161. I admit the pattern of engagements with Thungela over the years, to the extent that this is consistent with the attached correspondence.

162. I note that Thungela had already adopted and asserted its divergent interpretation with regard to section 65(3) of the Companies Act, by letter on 8 May 2023, leading up to the engagement on 21 June 2023.

163. I note further that when Thungela sent its invitation on 3 September 2025, the parties had already attempted to reach an agreed solution through mediation and failed. This invitation was confined to the 2024 shareholder-proposed resolution and without prejudice to the parties' opposing positions on the interpretation of section 65(3) of the Act. It also confirmed that the previous meeting engagement traversed general climate change issues and not the resolution itself.

164. Accordingly, it had become clear that further engagements would not be productive. Moreover, following years of engagement, it is clear that the question of law which is central to the dispute cannot be resolved through mediation or negotiation.

165. For the reasons detailed above, I deny that alternative forms of engagement, including private meetings, are a suitable replacement for shareholders' rights to propose resolutions under section 65(3) of the Act.

Ad para 69

166. I deny the allegations in this paragraph.

Ad para 70

167. I again deny that it would in any way be feasible for the applicants (or any other shareholder) to engage in meaningful, informal engagements with all 39,900 Thungela shareholders.

Ad para 71 (The attitude of other companies)

168. I deny the allegation that the applicants "*failed to take the court into their confidence*". The applicants' resolutions filed with other companies on climate-related matters are a matter of public record and are addressed in the founding affidavit.

Ad paras 72.1 – 72.3

169. I admit that Sasol and Exxaro have previously declined to table non-binding advisory resolutions co-filed by Just Share.

Ad paras 72.4 – 72.7

170. I admit the allegations in these paragraphs.

Ad para 72.8

171. I admit that Just Share has alleged that Standard Bank failed to comply with the undertakings made that led to the non-binding advisory resolution being passed by its shareholders in 2022.

172. I deny the remaining allegations in this paragraph and refer to what I have stated above in this regard. The fact that a resolution is non-binding does not exempt a company from criticism when it fails to heed the views and wishes of its shareholders.

Ad paras 73 – 89 (Constitutional rights)

173. I again deny the contention that the proper interpretation of section 65(3) does not engage constitutional rights. These matters will be addressed in argument.

Ad paras 90 - 93 (The status of non-binding resolutions)

174. I deny the allegations in these paragraphs, for the reasons set out above. These are also matters for argument.

Ad paras 94 – 95

175. It is disingenuous for Thungela to suggest that, because King IV and V and the JSE Listings Requirements do not expressly refer to such votes as "resolutions", they are not recognised as such. Thungela itself, in its AGM notices, refers to the non-binding advisory votes on its remuneration policy as being pursuant to an "ordinary non-binding resolution".

Ad paras 96 – 98.3

176. I refer to what I have stated above regarding the status of shareholders in the King Codes and the legitimacy of non-binding resolutions.

Ad paras 99 – 101

177. Save to admit the quoted portions of section 30A and 30B of the Companies Act, I deny that these provisions give any credence to Thungela's contention that non-binding resolutions have no place in our law.

Ad paras 102 - 118 (The proper interpretation of section 65(3))

178. I deny the interpretation of shareholders' rights under section 65(3) advanced by Thungela. These allegations will be addressed in argument.

Ad paras 119 - 136 (Thungela opposes the relief sought)

179. Save to note Thungela's opposition to the relief sought, these are all matters for argument.

180. I specifically deny that clause 30.4 of Thungela's MOI makes the tabling of shareholder-proposed resolutions a matter for the board's discretion or that it purports to impose any limitation on the rights of Thungela's shareholders. Section 65(3) of the Companies Act is an unalterable provision, which cannot be amended, qualified or overridden by Thungela's MOI.

Ad para 134

181. I deny the allegations in this paragraph. There is clearly a live dispute regarding the relief sought in prayer 2.3, because Thungela has not complied with its obligations in terms of sections 65(3) and 62(3)(c) of the Companies Act. That is precisely why this application has been brought.

Ad paras 137 – 151 (Condonation)

182. I note the allegations made in these paragraphs. The applicants do not oppose Thungela's condonation application and abide the court's decision in this regard.

Ad paras 159 (Ad seriatim)

183. I note the admission that this Court has jurisdiction.

Ad para 161

184. I note Thungela's admission that the applicants have own-interest standing to bring this application.

Ad paras 162 – 166

185. Save to admit the quotation from paragraph 10 of the founding affidavit, the allegations in this paragraph are denied.

186. Thungela itself has alleged that the legal issue at the heart of this dispute has implications for all South African companies. The fact that the dispute turns on a narrow question of law, does not negate its importance for the public at large. It also does not negate the fact that particular resolutions in question are clearly primarily about climate change, which is a pressing issue of public interest and concern.

Ad paras 169 – 170

187. Save to admit the quotations, I deny the allegations in this paragraph. The meaning and significance of the explanatory memorandum for the proper interpretation of section 65(3) is a matter for argument.

Ad paras 171 – 172

188. I note the admission that the 2008 Companies Act "undoubtedly" extended shareholder rights.

Ad paras 173 – 174

189. I admit that section 65(3) is necessary to avoid an abuse of power by the board and that it is a safeguard to ensure that where shareholders have voting rights, the board cannot defeat them or refuse to give effect to those rights. Section 65(3) is necessary to avoid abuses precisely of the kind exercised by Thungela's board for the last three years in denying shareholders their statutory rights.

Ad para 178

190. I again deny that Thungela's MOI places shareholders rights to propose and table resolutions in the discretion of the board and refer to what I have stated above on this issue.

Ad paras 179 – 181

191. I deny the allegations in these paragraphs. These are matters for argument.

Ad para 186

192. I deny the contents of this paragraph. The value of shareholder-proposed resolutions in advancing corporate governance and accountability, particularly in respect of climate change, has been addressed in detail in the founding papers and above.

Ad para 187

193. I deny the allegations in this paragraph, specifically the allegation that the recent repeal of relevant rules in the United States by the Trump-appointed Securities and Exchange Commission (SEC) somehow "*evidences that the right the applicants seek here is abused by activists and others, and is not supported by regulators, companies and the general investing public*".

193.1. SEC Rule 14a-8, which was first introduced in 1942, governs shareholder proposals filed with public companies.[28] Shareholder proposals under this rule are almost always framed in non-binding, "precatory" terms.[29] This rule has not been repealed.

193.2. Within the framework provided by this rule, shareholders have long used this shareholder proposal to advance human rights causes, including divestment from the apartheid regime and, more recently, climate change.

193.3. For more than 80 years, the SEC exercised administrative oversight and control over companies' decisions to refuse to table shareholder proposed resolutions, through a system of 'no action' letters.

193.4. In November 2025, the Trump-appointed SEC announced it would no longer substantively review companies' no-action requests under Rule 14a-8, abandoning its decades-long role as a neutral arbiter in the shareholder proposal process.

193.5. As a result, companies have been left to make unilateral exclusion decisions, forcing shareholders into costly federal litigation simply to get their proposals on a ballot.

193.6. This development reflects part of a broader campaign by the Trump administration to roll back efforts to address climate change and to curtail shareholder activism on this issue, as part of its well-documented policy of climate denialism and antipathy to environmental protections. This has been met by condemnation and outrage by civil society in the United States, as reflected in a press statement by the shareholder activism organisation *Reap as You Sow*, attached as "**TD60**".

[28] Securities and Exchange Act of 1934, 17 C.F.R. § 240.14a-8 (2011).
[29] Rule 14a-8(i)(1) and (7).

193.7. Thungela's apparent endorsement of these regressive steps in the US, which have been driven by the Trump administration's hostility to climate action, is both telling and deeply regrettable.

Ad para 188

194. I again deny the allegation that the applicants have not taken the court into its confidence regarding other resolutions filed with other companies. I have addressed this above and in the founding affidavit.

Ad paras 190 – 191

195. For the reasons stated above, I deny that the opportunity for shareholders to raise questions or points of discussion at AGMs, in terms of section 61(8)(d) of the Act, is in any way a suitable replacement for the right to propose and table resolutions under section 65(3) of the Companies Act.

Ad para 195

196. I again deny the allegation that the applicants have not meaningfully sought to engage with Thungela in other forums.

Ad paras 196 – 198

197. I deny that the applicants have ever admitted that the tabling of shareholder-proposed resolutions is a matter for the board's unilateral discretion. I repeat that paragraph 30.4 of Thungela's MOI cannot override the unalterable provisions of section 65(3) of the Act.

Ad para 199

198. I deny the allegations in this paragraph.

Ad para 201

199. I deny that the CIPC report is devoid of any reasoning or engagement with Thungela's submissions. The report speaks for itself.

Ad paras 203 – 204

200. I deny the allegations in these paragraphs. The meaning and effect of section 37 of the Act, read with Thungela's MOI, is a matter for argument.

Ad para 205

201. Again, Thungela mischaracterises the right contended for by the applicant, which is not of the nature alleged in this paragraph.

Ad paras 206 – 209

202. I deny the allegations in these paragraphs.

Ad para 210

203. I note that Thungela does not seek costs against the applicants, due to their non-profit nature.

CONCLUSION

204. In the circumstances, the applicants pray for relief as set out in the notice of motion.

TRACEY LAUREL DAVIES

I certify that this affidavit was signed and sworn to before me at Claremont on this the 17th day of **JUNE 2026**, the deponent having acknowledged that she knows and understand the content of this affidavit, with the Regulations contained in Government Notice No 1258 of 21 July 1972 and R1648 of 19 August 1977 (as amended), having been complied with.

COMMISSIONER OF OATHS

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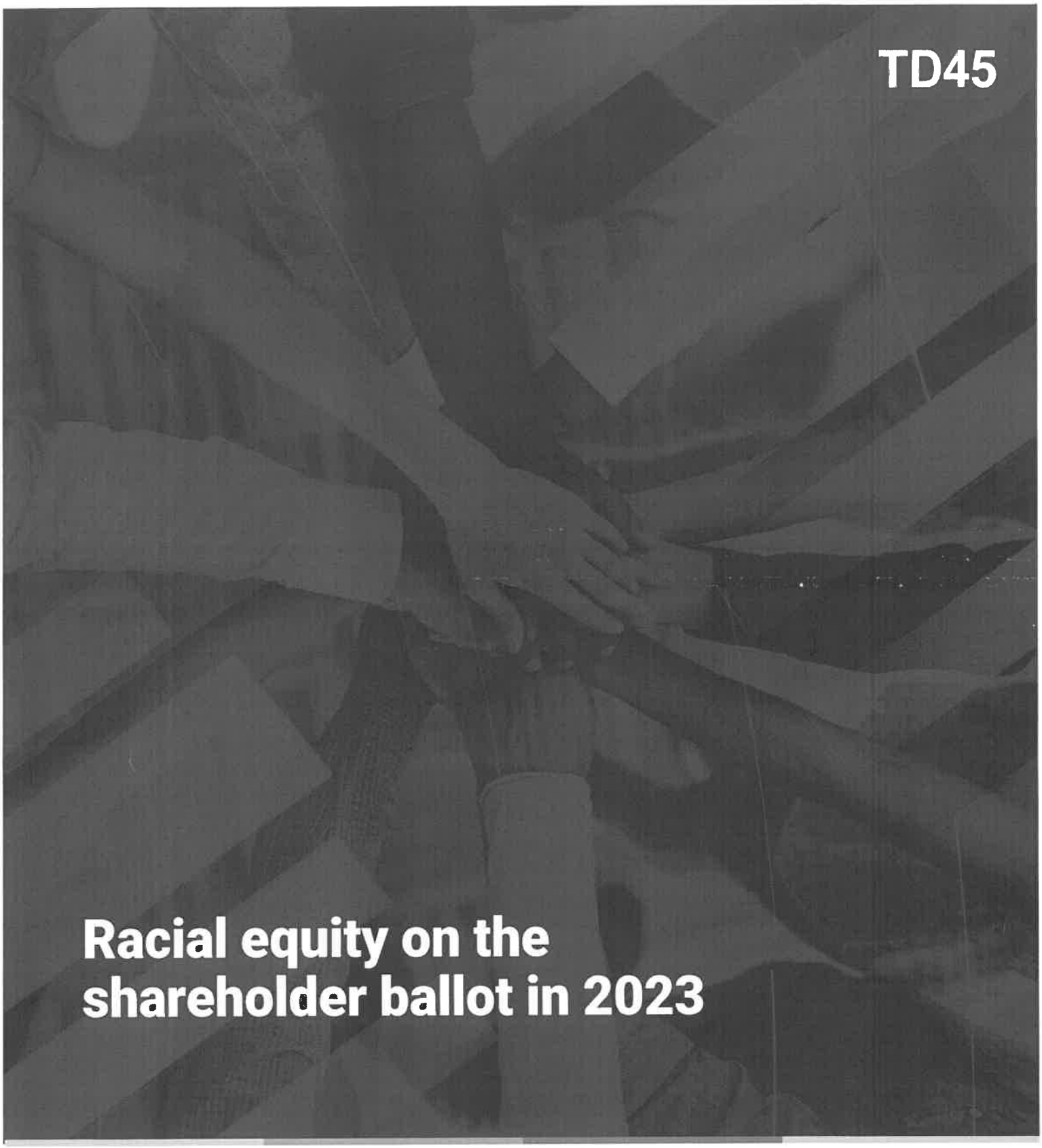


TD45

Racial equity on the shareholder ballot in 2023

SHARE

Introduction

Because of the fundamental role corporate and financial sector actors play in our economy and society, we believe that institutional investors will either contribute positively or negatively to the effort to address racial equity. How investors allocate and steward financial capital are important drivers of corporate behaviour.

SHARE has been engaging with Canadian and US companies over the past eighteen months asking that they conduct racial equity audits to identify and address discriminatory practices in their business operations, policies, practices, and services. A Racial Equity Audit is an independent, objective, and holistic analysis of a company's policies, practices, products and services and efforts to combat systemic racism in order to end discrimination within, or exhibited by, the company with respect to its customers, suppliers, or other stakeholders.

In 2022, companies like JP Morgan Chase and Mondelez International agreed to conduct a third-party racial equity audit in response to our shareholder proposals.

In 2023, SHARE filed seven proposals on racial equity issues and engaged twelve companies directly on diversity, equity, and inclusion issues.

In addition to SHARE's own proposals, there were another thirty-two proposals on ballots at North American companies related to racial equity issues.[1] In this investor brief, we examine the results of those votes and what they tell us about the state of investor stewardship related to racial equity.

[1] Note that this number does not include the 17 anti-ESG proposals identified in Table 3, below.

Publication date: January 2024

SHARE (Shareholder Association for Research and Education)

About SHARE: SHARE is an award-winning non-profit organization dedicated to mobilizing investor leadership for a sustainable, inclusive, and productive economy. We do this by supporting our investor network and amplifying their voices to improve corporate sustainability practices and implement better rules and regulations that govern capital markets. For more information on SHARE, visit **www.share.ca**

Racial equity on the shareholder ballot in 2023

Why are these votes important to shareholders?

Racial equity is not only a matter of justice. Its place on the ballot at corporate annual general meetings also relates to the compelling business case for corporate action to address justice, equity, diversity, and inclusion. Racial inequity is a global problem with broad economic repercussions threatening the long-term performance of diversified asset owners' portfolios.

Propelled by the global reckoning on racial justice in 2020, many companies in Canada and the U.S. pledged to contribute to the fight against systemic racism. These commitments generally took the form of a public statement and were accompanied by philanthropic donations and investments in internal or external initiatives aimed at closing disparities or supporting greater inclusion for racialized communities. Since that time, however, civil society organizations and investors alike have questioned the actual impact corporate efforts have had on addressing racism and have been promoting greater corporate transparency and accountability for racial equity.

Racial inequities and inequalities can negatively impact the long-term value of investee companies and universal asset owners' portfolios more broadly. While systemic racism is deeply rooted in historical and institutional practices perpetuating the unequal treatment and opportunities for racialized and Indigenous people, individual companies may play an important role in maintaining or exacerbating existing inequities.

Individually, a company's failure to address disparities in the workplace or those stemming from their services and products may generate material legal, regulatory, reputational, and financial risks including poor employee attraction and retention, erosion of consumer trust, or increased regulatory scrutiny. These may ultimately require a company to invest in even more costly corrective actions.

At a systemic level, racial inequity has added implications for the long-term performance of a diversified investor's portfolio. A 2019 report from McKinsey shows that the persistent racial wealth gap burdens the overall U.S. economy and estimates it may cost the U.S. economy 4 to 6 percent of the projected GDP, or US$1 to 2 trillion by 2028.[2] A report from Citi GPS published in 2020 suggests that the racial wealth gap between Black and white Americans has cost the U.S. economy up to $16 trillion over the past 20 years.[3] Since GDP growth is a key driver of portfolio returns across asset classes, the economic cost of systemic racial inequalities may expose a universal asset owner to lower returns across portfolios.[4]

[2] https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap
[3] https://ir.citi.com/NvIUkIHPlz14Hwd3oxqZBLMn1_XPqo5FrxsZD0x6hhil84ZxaxEujUWmak51UHvYk75VKeHCMI%3D
[4] https://www.majorityaction.us/s/MA_EquityintheBoardroom_2022REPORT.pdf

What issues garnered the most support in 2023?

Of the forty-one shareholder proposals that we identified as relating to racial equity issues (see Tables 1 and 2), fifteen requested that companies conduct third-party and independent racial equity audits.

Proposals requesting that companies conduct racial equity audits received an average support of 23% in 2023. In the U.S., the most supported racial equity audit proposal received 40% at American Water Works. In Canada, only two proposals were voted on this issue at the Royal Bank of Canada and the Bank of Montreal. The proposals respectively received 42% and 38% support from shareholders.

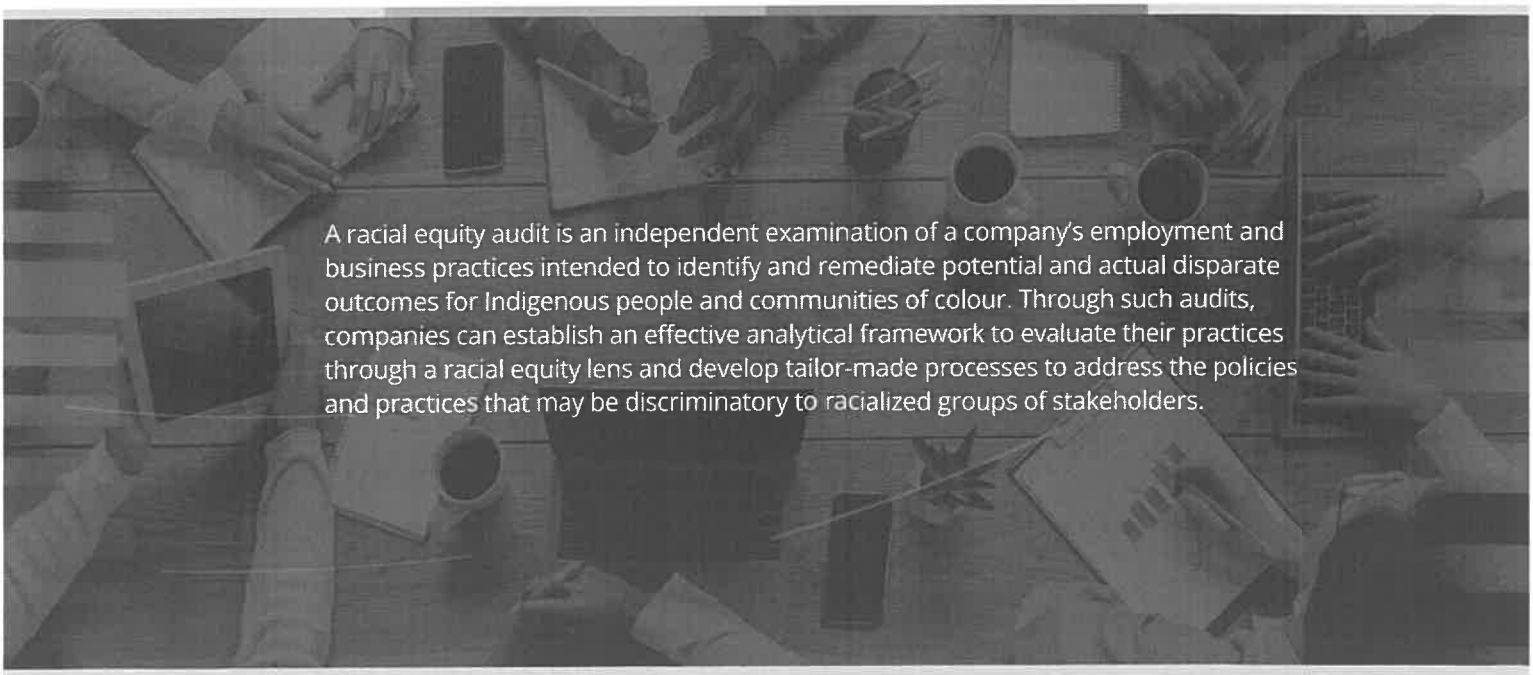
While proposals requesting racial equity audits received the most attention during the 2023 proxy season, other proposals addressing racial equity issues in the workplace were also on the ballot.

These twenty-six proposals were aimed at establishing more robust systems of accountability for workplace diversity, equity, and inclusion (DEI). Among these proposals, seven asked companies to provide a report on companies' efforts relating to DEI issues and received 25.3% support on average. One proposal achieved a majority vote, at Expeditors International of Washington.

Notably, another proposal filed by SHARE at CGI received 16% support but successfully achieved majority support from independent shareholders (62%).

There were ten proposals asking companies to disclose racial and gender pay metrics. These proposals tend to perform better than proposals asking for a broader DEI report as they received 33.8% shareholder support on average. A proposal at The Kroger Company achieved a majority vote with 52% shareholder support.

Other proposals included two proposals requesting a report on racism in company culture, four proposals looking at board diversity, and two proposals addressing Indigenous rights, including one asking Chubb Limited to report on the impact of its underwriting practices on Indigenous Peoples and one asking Citigroup to demonstrate the extent to which it respects Indigenous Peoples' rights in its existing and proposed general corporate and project financing.



A racial equity audit is an independent examination of a company's employment and business practices intended to identify and remediate potential and actual disparate outcomes for Indigenous people and communities of colour. Through such audits, companies can establish an effective analytical framework to evaluate their practices through a racial equity lens and develop tailor-made processes to address the policies and practices that may be discriminatory to racialized groups of stakeholders.

Other agreements

The list of proposals included in the tables below does not include all of the proposals that were filed by shareholders in 2023 but rather reflects those that went to a vote. It is common for shareholder proposals to be withdrawn before they are submitted to a vote. This generally results from productive discussions between the proponents and companies.

As an illustration, SHARE filed four shareholder proposals on racial equity audits in November 2022 in anticipation of a shareholder vote during the 2023 company annual meetings.

While the proposals at the Royal Bank of Canada and the Bank of Montreal went to vote, the other two proposals were withdrawn following meaningful commitments made by the National Bank of Canada and Canada Imperial Bank of Commerce.

Even though the proposals at the Royal Bank of Canada and the Bank of Montreal did not receive majority support from shareholders at their 2023 AGMs, both banks subsequently committed publicly to conduct such audits in alignment with the expectations set by SHARE.

"Anti-ESG" racial inequity proposals

Some shareholder proposals labeled as racial equity proposals were actually resolutions filed by organizations in the United States to block initiatives on racial equity (see Table 3, below). Seventeen of those were voted in 2023.

Sometimes this takes the form of an early filing of a proposal that sounds very similar to one filed by other shareholders, which blocks the ability of other shareholders to file at a particular company ("duplicative" proposals are not allowed, and the earliest filer is the one that gets to proceed).

In other instances, this takes the form of a legitimate proposal, but one aimed at pushing the board to discontinue equity programs at the company.

Thankfully, these proposals received exceptionally low votes as investors were, for the most part, able to distinguish them from other efforts.

Proxy advisory services and recommendations

The Canadian proxy advisory service GIR, using SHARE's guidelines, voted in favour of 100% of the legitimate shareholder proposals at companies owned by their clients (table 1, below).

Of the two largest proxy advisory services, Institutional Shareholder Services (ISS) recommended votes for 56% of the proposals, and against 44%. Glass Lewis recommended votes for 41.5% and against the rest.

Tables of results

Table 1: Votes by GIR using SHARE Guidelines

Companies	Meeting date	Proposal	Voting Result	GIR Vote cast	ISS Vote	GL Vote
Amazon.Com Inc.	May 24, 2023	Report on Racial and Gender Pay Gaps	29.2%	For	For	Against
American Water Works	May 10, 2023	Independent Racial Equity Audit	40.0%	For	For	Against
Apple Inc.	March 10, 2023	Report on Median Racial & Gender Pay Gaps	33.8%	For	For	Against
At&T	May 18, 2023	Independent Racial Equity Audit	21.5%	For	Against	For
Bank of America Corp	April 25, 2023	Racial Equity Audit	15.2%	For	Against	For
Bank of Montreal	April 18, 2023	Independent Racial Equity Audit	38.1%	For	Against	For
Berkshire Hathaway Inc	May 6, 2023	Reporting on the effectiveness of the Corporation's diversity, equity, and inclusion efforts.	20.9%	For	For	For
Caesar's Entertainment Inc.	June 13, 2023	Disclose Board Skills and Diversity Matrix	19%	For	For	For
CGI Inc	February 1, 2023	Report on Workforce Racial Equity	15.9%	For	Against	For
Charles Schwab Corp	May 18, 2023	Median Gender and Racial Pay Equity Report	24.7%	For	For	Against
Chevron Corporation	May 31, 2023	Independent Racial Equity Audit	9.8%	For	Against	Against
Chubb Limited	May 17, 2023	Impact of underwriting on Indigenous Peoples (Human Rights Risks and underwriting Process)	16.5%	For	Against	Against
Citigroup	May 31, 2023	Respect for Rights of Indigenous Peoples	31.5%	For	For	Against
Comcast Corporation	June 7, 2023	Independent Racial Equity Audit	10.8%	For	Against	For
Coca-Cola Company	April 25, 2023	Report on Third-Party Civil Rights Audit	16.5%	For	Against	Against
Danaher	May 9, 2023	Diversity and Inclusion report	16.1%	For	Against	Against
Eli Lilly And Company	May 1, 2023	Diversity and Inclusion report	27.1%	For	For	Against
Expeditors International of Washington	May 2,2023	Diversity and Inclusion report	57.3%	For	For	Against
Goldman Sachs Group	April 26, 2023	Independent Racial Equity Audit	11.6%	For	Against	Against
Goldman Sachs Group	April 26, 2023	Report on Median Racial & Gender Pay Gaps	31.4%	For	For	Against
Intuitive Surgical	April 27, 2023	Report on Median Racial & Gender Pay Gaps	35.3%	For	For	Against
Marriot International	May 12, 2023	Report on Gender/Racial Pay Gap	23.9%	For	For	Against
NextEra Energy	May 18, 2023	Disclose Board Skills and Diversity Matrix	48.9%	For	For	For
Royal Bank of Canada	April 5, 2023	Racial Equity Audit	42.2%	For	For	For
Tesla, Inc.	Aug 04, 2022	Stockholder annual reporting on Board diversity	9.7%	For	Against	Against
The Kroger Co.	June 22, 2023	Gender and Racial Pay Gap	51.9%	For	For	For
United Parcel Service, Inc.	May 4, 2023	Diversity and Inclusion Report	25.0%	For	For	For
UnitedHealth Grp Inc	June 5, 2023	Third-Party Racial Equity Audit	20.6%	For	Against	For
Valero Energy Corp	May 9, 2023	Racial Equity Audit	11.9%	For	Against	Against
Walmart	Ma 31, 2023	Racial Equity Audit	18.2%	For	For	For

Table 2: Other key DEI votes - companies not held by GIR clients

Companies	Meeting date	Proposal	Voting Result	ISS Vote	GL Vote
AO Smith Corp	April 11, 2023	Report on Whether Company Policies Reinforce Racism in Company Culture	9.0%	Against	Against
Block	June 13, 2023	Diversity and Inclusion Report	14.9%	For	Against
Boeing Company	April 18, 2023	Median Gender and Racial Pay Equity Report	47.4%	For	For
DexCom Inc	May 18, 2023	Report on Median Gender/Racial Pay Gap	35.9%	For	Against
Digital Realty Trust	June 8, 2023	Report on Whether Company Policies Reinforce Racism in Company Culture	12.8%	Against	Against
Equifax	May 4, 2023	Racial Equity Audit	30.8%	Against	For
Kellogg	April 28, 2023	Gender and Racial Pay Gap	24.0%	For	Against
Las Vegas Sands Corp	May 11, 2023	Disclose Board Skills and Diversity Matrix	18.4%	For	For
Mohawk Industries	May 24, 2023	Racial Equity Audit	20.7%	For	Against
Travelers Companies Inc	May 24, 2023	Racial Equity Audit	35.3%	For	For
Travelers Companies Inc	May 24, 2023	Report on risks related to police violations of civil rights and liberties	10.6%	Against	Against

Table 3: Anti-ESG votes related to racial equity measures

Companies	Meeting date	Proposal	Voting Result	GIR Vote cast	ISS Vote	GL Vote
Amazon.Com Inc.	May 24, 2023	Shareholder proposal requesting an analysis of costs associated with diversity, equity, and inclusion programs	0.8%	Against	Against	Against
Apple Inc.	March 10, 2023	A shareholder proposal entitled "Civil Rights and Non-Discrimination Audit Proposal"	1.4%	Against	Against	Against
Blackrock Inc	May 23, 2023	Civil Rights Audit	1.1%	Against	Against	Against
Bristol-Myers Squibb	May 2, 2023	Commission a Civil Rights and Non-Discrimination Audit	1.6%	Against	Against	Against
Capital One Financial	May 4, 2023	Report on Board oversight of Discrimination	0.9%	Not held	Against	Against
Caterpillar Inc.	June 14, 2023	Civil Rights Audit	1.7%	Against	Against	Against
Charles Schwab Corp	May 18, 2023	Report on Board oversight of Discrimination	1.0%	Against	Against	Against
Kellogg	April 28, 2023	Civil Rights Audit	2.0%	Not held	Against	Against
Kraft Heinz	May 4, 2023	Civil Rights Audit	1.0%	Against	Against	Against
Mastercard Inc.	June 27, 2023	Consideration of a stockholder proposal requesting a report on the cost-benefit analysis of diversity and inclusion efforts	0.5%	Against	Against	Against
McDonald's	May 25, 2023	Civil Rights Audit	2.4%	Against	Against	Against
Microsoft Corp	December 13, 2022	Report on Cost/Benefit Analysis of Diversity and Inclusion	1.3%	Against	Against	Against
PayPal	May 24, 2023	Report on Board oversight of Discrimination	1.2%	Against	Against	Against
The Home Depot, Inc	May 18, 2023	Rescind 2022 Racial Equity Audit Proposal	0.9%	Against	Against	Against
The Kroger Co.	June 22, 2023	Omitting the Viewpoint and Ideological Diversity from EEO policy	1.9%	Against	Against	Against
United Parcel Service, Inc.	May 4, 2023	Civil Rights Audit	5.6%	Against	Against	Against
Walmart	May 31, 2023	Racial and Gender Layoff Diversity Report	1.5%	Against	Against	Against

Next steps

SHARE's engagement service is continuing to engage with companies and file additional proposals on the issues at hand. If you are interested in participating in our program, please get in touch.

In addition to direct engagement, SHARE:

- Has established an 'Investors for Racial Equity Community of Practice' in which a group of asset owners are meeting regularly to establish best practices in investment and oversight of investment managers to advance racial equity outcomes;
- Has produced an asset manager oversight questionnaire which asset owners can use to facilitate deeper and more effective discussions with asset managers, including identifying opportunities and gaps in how their investment managers addresses racial equity issues both within their organizations and as part of their stewardship practices; and
- alongside our many network partners, is advocating regularly for improvements to corporate disclosure rules to provide better data for racial equity performance by Canadian and US issuers.

GIR, a proxy voting advisory service (partly owned by SHARE) is available to assist with shareholder voting, evaluated using SHARE's unique proxy voting guidelines that include a strong racial equity focus. https://www.gir-canada.com/en/

For more information on how SHARE can help your organization address racial equity in its investment practice, please contact us at the address below.

SHARE

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Territories of the Mississaugas of the Credit, Anishnabeg, Chippewa, Haudenosaunee and Wendat peoples

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

TD46

DIVISION OF
CORPORATION FINANCE

April 7, 2022

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Amazon.com, Inc. (the "Company")
Incoming letter dated January 24, 2022

Dear Mr. Mueller:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the New York City Employees' Retirement System et al. for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal urges the board to issue a report examining whether the Company's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers, including lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(11). In our view, the Proposal does not substantially duplicate the proposal submitted by the New York State Common Retirement Fund et al.

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Michael Garland
City of New York
Office of the Comptroller

GIBSON DUNN

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January 24, 2022

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Amazon.com, Inc.*
Shareholder Proposal of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the New York City Board of Education Retirement System
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Amazon.com, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (collectively, the "2022 Proxy Materials") a shareholder proposal (the "Duplicate Proposal") and statement in support thereof (the "Supporting Statement") received from the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the New York City Board of Education Retirement System (collectively, the "Proponents").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Duplicate Proposal, a copy of such correspondence should be

furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE DUPLICATE PROPOSAL

The Duplicate Proposal states:

> **RESOLVED:** Shareholders urge the Amazon.com ("Amazon") Board of Directors to issue a report, at reasonable cost and excluding proprietary information, examining whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers.
>
> Among other things, the report shall include lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity.

A copy of the Duplicate Proposal and the Supporting Statement, as well as related correspondence with the Proponents, is attached to this letter as Exhibit A.[1]

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Duplicate Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal previously submitted to the Company that the Company expects to include in its 2022 Proxy Materials.

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[1] In reliance on the announcement by the Staff, we have omitted all correspondence that is not directly relevant to this no-action request. *See* Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials, *available at* https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217 (last updated Dec. 17, 2021).

ANALYSIS

The Duplicate Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates Another Proposal That The Company Expects To Include In Its 2022 Proxy Materials.

A. Background.

The Duplicate Proposal substantially duplicates a shareholder proposal the Company previously received from the New York State Common Retirement Fund, Sisters of the Holy Names of Jesus and Mary, U.S.-Ontario Province, Northwest Women Religious Investment Trust, Congregation of Sisters of St. Joseph of Peace, Praxis Growth Index Fund, and The Robert H. and Elizabeth Fergus Foundation (the "Prior Proposal," and together with the Duplicate Proposal, the "Proposals") and statements in support thereof (together with the Supporting Statement, the "Supporting Statements") because (i) both Proposals seek to have the Company assess and report on implications of the Company's operations on civil rights and racial equity; (ii) the Prior Proposal was submitted to the Company before the Duplicate Proposal; and (iii) the Company expects to include the Prior Proposal in the 2022 Proxy Materials.

The Prior Proposal states:

> **Resolved**
>
> Shareholders of Amazon.com, Inc. ("Amazon") request that the Board of Directors commission a racial equity audit analyzing Amazon's impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on Amazon's business. The audit may, in the board's discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which Amazon operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Amazon's website.

A copy of the Prior Proposal and statement in support thereof is attached to this letter as Exhibit B.

The Company received the Prior Proposal on October 20, 2021, whereas the Company subsequently received the Duplicate Proposal on December 15, 2021. The Company intends to include the Prior Proposal in the 2022 Proxy Materials. As discussed below, the Proposals

share the same core concern, and the Duplicate Proposal therefore is properly excludable under Rule 14a-8(i)(11).

B. The "Substantially Duplicates" Standard.

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it "substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting." The Commission has stated that "the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976) (the "1976 Release"). When two substantially duplicative proposals are received by a company, the Staff has indicated that the company must include the first of the proposals it received in its proxy materials, unless that proposal otherwise may be excluded. *See, e.g.*, *Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994).

A proposal may be excluded as substantially duplicative of another proposal despite differences in terms or scope and even if the proposals request different actions. *See, e.g.*, *Exxon Mobil Corp.* (avail. Mar. 13, 2020) (concurring with the exclusion of a proposal as substantially duplicative where the Staff explained that "the two proposals share a concern for seeking additional transparency from the [c]ompany about its lobbying activities and how these activities align with the [c]ompany's expressed policy positions" despite the proposals requesting different actions); *Exxon Mobil Corp.* (avail. Mar. 9, 2017) (concurring with the exclusion of a proposal requesting a report on the company's political contributions as substantially duplicative of a proposal requesting a report on lobbying expenditures); *Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring with the exclusion of a proposal seeking a review and report on the company's loan modifications, foreclosures, and securitizations as substantially duplicative of a proposal seeking a report that would include "home preservation rates" and "loss mitigation outcomes," which would not necessarily be covered by the other proposal); *Chevron Corp.* (avail. Mar. 23, 2009, *recon. denied* Apr. 6, 2009) (concurring with the exclusion of a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company's expanding oil sands operations in the Canadian boreal forest as substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company's products and operations); *Bank of America Corp.* (avail. Feb. 24, 2009) (concurring with the exclusion of a proposal requesting the adoption of a 75% hold-to-retirement policy as subsumed by another proposal that included such a policy as one of many requests); *Ford*

Motor Co. (Leeds) (avail. Mar. 3, 2008) (concurring with the exclusion of a proposal to establish an independent committee to prevent founding family shareholder conflicts of interest with non-family shareholders as substantially duplicative of a proposal requesting that the board take steps to adopt a recapitalization plan for all of the company's outstanding stock to have one vote per share). The Staff has traditionally referred to Rule 14a-8(i)(11)'s substantial duplication standard as assessing whether the later proposal presents the same "principal thrust" or "principal focus" as a previously submitted proposal, *see Pacific Gas & Electric Co.* (avail. Feb. 1, 1993), or the same core concern.

C. The Duplicate Proposal Has The Same Core Concern As The Prior Proposal.

As noted above, the Prior Proposal "request[s] that the Board of Directors commission a racial equity audit analyzing Amazon's impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on Amazon's business." The Prior Proposal's supporting statement asserts that "[c]ompanies would benefit from assessing the potential risks of their . . . corporate practices that are or are perceived to be discriminatory, racist, or increasing inequalities." It notes that the Company has taken some measures to address racial justice and equity, including "publishing workforce diversity data," but asserts that the Company faces "[c]ontroversies related to workforce diversity [and] treatment of minority workers," and "failure to protect warehouse workers, who are mostly people of color." The supporting statement states that "the core issues of this proposal" are "how Amazon is implementing its racial equity, diversity and inclusion strategy."

Although phrased differently, the principal concern of the Prior Proposal encompasses the diversity, equity, and inclusion concern of the Duplicate Proposal: both Proposals include a request that the Company assess and report on implications of the Company's operations on its racial equity, diversity, and inclusion initiatives with respect to its employees. It is important to note that, although not pertinent to the Rule 14a-8 basis addressed in this no-action request, the Company believes that the actions and issues addressed in the Proposals and Supporting Statements do not accurately reflect the Company's commitment to, support of, and existing actions to address the important social issues of civil rights, racial justice and equity, and diversity and inclusion, as reflected in numerous Company statements, including the Company's statement of key principles set forth in the Company's "Leadership

Principles" and its "Our Positions" statement,[2] in Company policies,[3] and in various commitments issued by the Company.[4] The Company serves diverse customers, operates in diverse communities, and relies on a diverse workforce. In this regard, the Company currently has policies and procedures in place for its employees, sellers, and customers that are intended to support its commitment to civil rights, racial equity, and diversity and inclusion, and the Company looks for ways to scale its impact as it grows.

The duplication in the core concern and primary focus of the Proposals is demonstrated by the overlapping language, focus, and concerns expressed in the Proposals and their Supporting Statements:

The Prior Proposal	***The Duplicate Proposal***
Both Proposals ask for Board oversight of the requested review and report.	
"Shareholders of Amazon.com, Inc. ('Amazon') request that the Board of Directors commission a racial equity audit . . . ."	"Shareholders urge the Amazon.com ('Amazon') Board of Directors to issue a report . . . ."
Both Proposals ask for an assessment and report on potential racial equity impacts of the Company's operations on its employees.	
"[C]ommission a racial equity audit analyzing Amazon's impacts on civil rights, diversity, equity and inclusion . . . [and	"[I]ssue a report . . . examining whether Amazon's . . . practices give rise to any racial . . . disparities in workplace injury

[2] *See* Leadership Principles, *available at* https://www.aboutamazon.com/about-us/leadership-principles; Our Positions, *available at* https://www.aboutamazon.com/about-us/our-positions.

[3] *See, e.g.*, the Company's Global Human Rights Principles, *available at* https://sustainability.aboutamazon.com/people/human-rights/principles; the Company's Supply Chain Standards, *available at* https://sustainability.aboutamazon.com/amazon_supply_chain_standards_english.pdf.

[4] *See, e.g.*, Housing Equity Fund (a commitment to provide more than $2 billion in below-market loans and grants to preserve and create more than 20,000 affordable homes for individuals and families earning moderate to low incomes in the Company's hometown communities), *available at* https://www.aboutamazon.com/impact/community/housing-equity.

publicly disclose a] report on the audit . . . ."	rates among its warehouse workers and the impact of any such disparities on . . . minority warehouse workers."[5]
Both Supporting Statements highlight concerns for systemic racism and racial equity.	
"The murder of George Floyd, and the public outcry over the killings of other Black men and women, has galvanized the movement for racial justice and equity." "Amazon tweeted its solidarity with the fight against systemic racism." "Amazon has taken some measures to address racial justice and equity, including committing financial resources and publishing workforce diversity data."	"[W]ork injuries and illnesses exact a tremendous toll on society, and COVID-19 has unequally affected many racial and ethnic minority groups by putting them more at risk of getting sick and dying." "One pre-pandemic study found that non-Hispanic Black and Hispanic workers were more likely to experience work-related disabilities, compared to white workers." "An older study found that Black workers' occupational fatality rate was 1.3 to 1.5 times higher."
Both Supporting Statements specifically address potential risks to minority workers.	
"Lawsuits alleging . . . failure to protect warehouse workers, who are mostly people of color . . ."	"Given its racially and ethnically diverse warehouse workforce, Amazon's higher illness and injury rates may have a more pronounced impact on workers of color."

[5] While the Duplicate Proposal requests that the report address "any racial *and* gender disparities" (emphasis added) and the impact on "female and minority warehouse workers," the Duplicate Proposal's focus is unambiguously highlighted by the Supporting Statement. The Supporting Statement makes eight references to race—"workers of color," "systemic racism," "'racial and ethnic minority groups,'" "non-Hispanic Black and Hispanic workers . . . compared to white workers," "Black workers' occupational fatality rate," "racially and ethnically diverse warehouse workforce," "more pronounced impact on workers of color," and "warehouse workers of color"—and zero references to women or gender.

Both Supporting Statements address concerns regarding a potential disproportionate impact of Company operations on minority workers.	
"Amazon faces controversies . . . includ[ing] . . . related to workforce diversity, treatment of minority workers . . ."	"To the extent that more workers of color are affected [by workplace injuries], Amazon may perpetuate systemic racism."
Both allege that it is unclear how the Company is addressing the issues raised in the Proposals, and that these issues are relevant to shareholders.	
"There is no public evidence that Amazon is assessing the potential or actual negative impacts of its policies, practices, products, and services through a racial equity lens."	"[I]nvestors lack transparency into how Amazon analyzes adverse impacts of the [C]ompany's health and safety practices on its . . . workers of color."
"[W]e believe that it is in shareholders' best interests for Amazon to proactively identify and mitigate risks through an independent racial equity audit."	"[Amazon] does not . . . publicly disclose such data, which may be material to long-term investors."

The differences in the wording and scope of the Proposals do not change the fact that the audit and report called for under the Prior Proposal would address and encompass the diversity, equity, and inclusion concern raised in the Duplicate Proposal. Both focus on a concern regarding actual or potential negative impacts of the Company's operations on the Company's diverse employees. The fact that the Prior Proposal seeks to assess such information in the context of the Company's entire business while the Duplicate Proposal seeks to evaluate that information in the context of one aspect of the Company's operations – its health and safety practices – does not prevent the Duplicate Proposal from substantially duplicating the Prior Proposal. Likewise, even though the Duplicate Proposal refers to "racial and gender disparities" and the potential impact of Company practices on "female and minority warehouse workers," these concerns align with the Prior Proposal's references to

"impacts on civil rights, diversity, equity and inclusion" and to "assessing . . . corporate practices that are or are perceived to be discriminatory, racist, or increasing inequalities."[6]

Notably, this past proxy season, the Staff already concurred with the applicability of Rule 14a-8(i)(11) when the Company received a proposal substantially similar to the Prior Proposal and subsequently received a proposal concerning the potential impacts of one aspect of the Company's operations on racial equity. In *Amazon.com, Inc. (John Mixon et al.)* (avail. Apr. 7, 2021) ("*Amazon 2021*"), the Company received an initial proposal with virtually the same "Resolved" clause as the Prior Proposal (except that the sequence of the words "diversity, equity" was reversed) (the "2021 Proposal") and thereafter received another proposal also centered around potential disparate impacts of the Company's operations on communities of color (in particular, concerning environmental and health harms associated with pollution from the Company's delivery logistics and other operations). The Company argued that the 2021 Proposal encompassed the same concern as the subsequent proposal, "focusing on the Company's entire business, which includes the Company's delivery logistics and other operations targeted by the [subsequent p]roposal, and focusing on concerns over the potential impact of the Company's operations on racial equity broadly." The Company further argued that notwithstanding this difference in scope, both the 2021 Proposal and the subsequent proposal called for a report analyzing the potential effects of the Company's operations on civil rights and racial equity. The Staff concurred with the exclusion of the subsequent proposal as substantially duplicative of the 2021 Proposal under Rule 14a-8(i)(11).

The Proposals mirror those in *Amazon 2021*. The Prior Proposal again focuses on the Company's entire business and concerns over the potential impact of the Company's operations on racial equity, while the subsequently received Duplicate Proposal addresses one aspect of that same topic—the potential impact of the Company's operations on injury rates, long-term earnings, and career advancement among the Company's racial/ethnic minority workers. Notwithstanding the difference in scope, both Proposals share the same concern in that they call for a report that includes assessing the implications of the Company's operations on racial equity among the Company's employees.

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[6] A report authored by the individual who conducted the racial equity audits at Facebook and Airbnb and issued by The Leadership Conference on Civil and Human Rights states, "I [have] found that the media and stakeholders used the terms 'racial equity audit,' 'civil rights audit' and 'civil rights assessment' interchangeably. You will notice that I do so in this paper as well." *See* The Leadership Conference on Civil and Human Rights, *The Rationale for and Key Elements of a Business Civil Rights Audit*, at 11, *available at* http://www.civilrightsdocs.info/pdf/reports/Civil-Rights-Audit-Report-2021.pdf.

As in *Amazon 2021*, the Proposals are not identical and differ slightly in their scope, but the core concern regarding the potential impact of the Company's operations on racial equity is the same in each case. The Company had received additional proposals that were considered in *Amazon 2021* that provide informative examples of proposals that the Staff determined did *not* have the same principal focus as the 2021 Proposal—these concerned surveillance, cloud, or computer vision capabilities that contribute to human rights violations; hate speech and sales of offensive products; and promotion velocity rates. The proposal concerning promotion velocity rates did mention that the requested report should provide data "by title and level for different gender and racial identities," but this appeared to be merely additional information and secondary to the primary focus of whether the Company in practice discriminated in promoting employees, and was not focused on assessing potential racial equity impacts of the Company's operations. These examples of what the Staff determined were not substantially duplicative of the 2021 Proposal provide a helpful and straightforward point of comparison—where it was clear that racial equity (or the lack thereof, whether broadly or narrowly) was a focus, such as with the Duplicate Proposal, the Staff concurred with the exclusion of the subsequently received proposal.

In line with its determination in *Amazon 2021*, the Staff has consistently concurred that two proposals can be substantially similar within the meaning of Rule 14a-8(i)(11) notwithstanding differences in the wording or scope of actions requested. For example, in *Cooper Industries, Ltd.* (avail. Jan. 17, 2006), the Staff concurred with the exclusion under Rule 14a-8(i)(11) of a proposal requesting that the company "review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies and to report its findings" as substantially duplicating a previously submitted proposal requesting that the company "commit itself to the implementation of a code of conduct based on . . . ILO human rights standards and United Nations' Norms on the Responsibilities of Transnational Corporations with Regard to Human Rights." *See also, e.g.*, *Caterpillar Inc. (AFSCME Employees Pension Plan)* (avail. Mar. 25, 2013) (concurring with the exclusion of a proposal requesting a report as substantially duplicative of a proposal that the company "review and amend, where applicable," certain policies and post a summary of the review on the company's website, despite the addition of an additional action in connection with the requested report); *Ford Motor Co.* (avail. Feb. 19, 2004) (concurring with the exclusion of a proposal calling for internal goals related to greenhouse gases as substantially duplicative of a proposal calling for a report on historical data on greenhouse gas emissions and the company's planned response to regulatory scenarios, where the company successfully argued that "[a]lthough the terms and the breadth of the two proposals are somewhat different, the principal thrust and focus are substantially the same, namely to

encourage the [c]ompany to adopt policies that reduce greenhouse gas emissions in order to enhance competitiveness").

In addition, even if the Duplicate Proposal is in some respects narrower or more limited than the Prior Proposal, or touches on issues that are not also directly referenced in the Prior Proposal, the Staff previously has concurred with the exclusion of shareholder proposals as substantially duplicative even when the second proposal differs in scope from the first proposal. For example, in *JPMorgan Chase & Co. (New York City Employees' Retirement System et al.)* (avail. Mar. 14, 2011), the Staff concurred that a proposal that specifically requested a report on internal controls over the company's mortgage servicing operations could be omitted in reliance on Rule 14a-8(i)(11) as substantially duplicative of other previous proposals that asked for general oversight on the development and enforcement of already-existing internal controls related to loan modification methods. Irrespective of the differences in scope and detail, the principal focus and the core issue of general mortgage modification practices remained the same. *See also Exxon Mobil Corp. (Goodwin et al.)* (avail. Mar. 19, 2010) (concurring with the exclusion of a proposal seeking consideration of a decrease in the demand for fossil fuels as substantially duplicative of a proposal asking for a report to assess the financial risks associated with climate change); *Lehman Brothers Holdings Inc.* (avail. Jan. 12, 2007) (concurring with the exclusion of a proposal requesting semi-annual reports on independent expenditures, political contributions, and related policies and procedures as substantially duplicative of a proposal that sought an annual disclosure of independent expenditures and political contributions); *American Power Conversion Corp.* (avail. Mar. 29, 2002) (concurring with the exclusion of a proposal asking that the company's board of directors create a goal to establish a two-thirds independent board as substantially duplicative of a proposal that sought a policy requiring nomination of a majority of independent directors).

More recently, the Staff has agreed that "where one proposal incorporates or encompasses the elements of a later proposal, the subsequent proposal may be excluded." *Exxon Mobil Corp.* (avail. Mar. 13, 2020) ("*Exxon Mobil*"). In *Exxon Mobil*, an initially received proposal requested a report disclosing the company's lobbying policies and payments, while a subsequently received proposal requested a report describing how the company's lobbying activities aligned with the Paris Climate Agreement's global warming goal. The company argued that the initially received proposal encompassed the subject matter raised in the subsequent proposal, covering the same subject but with a broader scope, and therefore "subsume[d] and incorporate[d] the [subsequent p]roposal, which addresse[d] a subset of issues (limited to the subject of climate change) covered by the [subsequent p]roposal." The Staff concurred with the exclusion of the subsequent proposal under Rule 14a-8(i)(11) as

substantially duplicative of the initial proposal. *See also Duke Energy Corp.* (avail. Feb. 19, 2016) (concurring with the exclusion of a proposal requesting that the board review and report on the company's relationship with organizations that may engage in lobbying as substantially duplicative of an earlier-received proposal requesting disclosure of the company's lobbying policies and payments); *Pfizer Inc.* (avail. Feb. 17, 2012) (concurring with the exclusion of a proposal requesting a lobbying priorities report as substantially duplicative of an earlier-received proposal requesting increased lobbying disclosure). As in *Exxon Mobil* and the other lines of precedent cited above, the Prior Proposal subsumes and incorporates the Duplicate Proposal, which addresses a subset of issues (limited to the subject of civil rights, diversity, racial equity, and inclusion). Specifically, the Duplicate Proposal focuses on the narrower topic of analyzing the impacts on diversity, racial equity, and inclusion of workplace injury rates among the Company's warehouse workers, while the Prior Proposal encompasses the subject matter of the Duplicate Proposal by broadly assessing Amazon's impacts on "civil rights, diversity, equity and inclusion" (which would include racial disparities in workplace health and safety practices).

As noted above, the purpose of Rule 14a-8(i)(11) "is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." 1976 Release. Because the Duplicate Proposal substantially duplicates the Prior Proposal, the Company's shareholders should not be required to twice consider whether the Company should evaluate and report on the racial equity implications of its operations, and the Company should not have to risk creating shareholder confusion by asking them to vote on two proposals addressing the same concern. In addition, if the voting outcome on the two proposals differed, the shareholder vote would not provide guidance on what actions shareholders want the Company to pursue, given that the same actions would be necessary to implement either proposal. For example, if the Prior Proposal was approved by the Company's shareholders, but the Duplicate Proposal was not approved, it would be unclear whether shareholders did not support the Duplicate Proposal because they viewed it as encompassed by the Prior Proposal, or whether the Company should interpret those results to mean that under both the Prior Proposal and the Duplicate Proposal, the Company's shareholders did not share a concern about potential implications of the Company's operations on its workforce.

As indicated by the Staff's determination in *Amazon 2021*, the variations in wording do not change the conclusion that the Duplicate Proposal would have its core concern addressed through implementation of the Prior Proposal and shares the same core concern and principal focus. Accordingly, the Duplicate Proposal may be excluded pursuant to Rule 14a-8(i)(11) as substantially duplicative of the Prior Proposal.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Duplicate Proposal from its 2022 Proxy Materials, and we respectfully request that the Staff concur that the Duplicate Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or Mark Hoffman, the Company's Vice President & Associate General Counsel, Corporate and Securities, and Legal Operations, and Assistant Secretary, at (206) 266-2132.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.
Michael Garland, Office of the Comptroller of the City of New York

GIBSON DUNN

EXHIBIT A

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

MUNICIPAL BUILDING
ONE CENTRE STREET, 8TH FLOOR NORTH
NEW YORK, N.Y. 10007-2341

Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT

December 14, 2021

David A. Zapolsky
Secretary
Amazon.com
410 Terry Avenue North,
Seattle, WA 98109

Dear Mr. Zapolsky:

I write to you on behalf of the Comptroller of the City of New York, Scott M. Stringer. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and custodian of the New York City Board of Education Retirement System (individually a "System," collectively the "Systems"). The Systems' boards of trustees have authorized the Comptroller to submit and otherwise act on the Systems' behalf with respect to the enclosed shareholder proposal, and to inform you of the Systems' intention to present the shareholder proposal for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in full compliance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Each System is the beneficial owner of at least $25,000 in market value of the Company's securities entitled to vote on the shareholder proposal and have held such stock continuously for at least one year. Furthermore, each System intends to continue to hold at least $25,000 worth of these securities through the date of the Company's next annual meeting. Proof of continuous ownership for the requisite time period will be sent by the Systems' custodian bank, State Street Bank and Trust Company, under separate cover.

We welcome the opportunity to discuss the shareholder proposal with you and are available to meet via teleconference at 3:30 pm ET on January 10 or January 12, 2021.

Please note that if the Company believes that the Systems or the enclosed shareholder proposal has failed to meet one or more of the eligibility or procedural requirements set forth in answers to Questions 1 through 4 of Rule 14a-8, the Company must notify us in writing of any alleged deficiency within 14 calendar days of receiving the proposal and provide us with an opportunity to respond to any alleged deficiency within 14 days of receiving the Company's written notification.

I can be contacted at the phone number or email address set forth above to schedule a meeting with the Company or to address any questions the Company may have about the enclosed proposal.

Sincerely,

Michael Garland

Enclosure

Board Report on Worker Health and Safety Disparities

RESOLVED: Shareholders urge the Amazon.com ("Amazon") Board of Directors to issue a report, at reasonable cost and excluding proprietary information, examining whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers.

Among other things, the report shall include lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity.

SUPPORTING STATEMENT:

As recognized by Occupational Safety and Health Administration, the cost of workplace injuries is borne primarily by injured workers (who, on average, earn 15% less over ten years following an injury), their families, and taxpayer-supported components of the social safety net, with societal costs adding "inequality to injury."[1]

Amazon is the second largest employer in the United States; its health and safety issues have a significant impact on its 1.3 million workers, their households and society. To the extent that more workers of color are affected, Amazon may perpetuate systemic racism.

According to the Centers for Disease Control, "[w]ork injuries and illnesses exact a tremendous toll on society, and COVID-19 has unequally affected many racial and ethnic minority groups by putting them more at risk of getting sick and dying."[2] One pre-pandemic study found that non-Hispanic Black and Hispanic workers were more likely to experience work-related disabilities, compared to white workers.[3] An older study found that Black workers' occupational fatality rate was 1.3 to 1.5 times higher.[4]

Amazon has been cited for significantly higher injury rates at its warehouses before and during the pandemic. Since 2017, according to one analysis of government data, Amazon reported a higher rate of serious injury incidents leading to missed work or to light-duty shifts than at other retailers' warehouses.[5] Data also show Amazon's serious injury rates were nearly double those of their peers.[6] One national health and safety group included Amazon in its 2018 and 2019 "Dirty Dozen" list of most dangerous employers in the United States, citing it in 2020 for dishonorable mention.[7]

Given its racially and ethnically diverse warehouse workforce,[8] Amazon's higher illness and injury rates may have a more pronounced impact on workers of color.

Amazon has announced that it is making large investments in safety and health initiatives (although details are lacking) and it already discloses the company's lost time injury rate to the federal government. It does not, however, publicly disclose such data, which may be material to long-term investors. Also, investors lack transparency into how Amazon analyzes adverse impacts of the company's health and safety practices on its workers, especially warehouse workers of color.

We urge shareholders to vote FOR this proposal.

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[1]https://www.osha.gov/sites/default/files/inequality_michaels_june2015.pdf
[2]https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html
[3]Racial And Ethnic Differences In The Frequency Of Workplace Injuries And Prevalence Of Work-Related Disability | Health Affairs
[4] https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.88.1.40
[5]https://www.washingtonpost.com/technology/2021/06/01/amazon-osha-injury-rate/
[6]https://www.washingtonpost.com/technology/2021/06/01/amazon-osha-injury-rate/; https://www.forbes.com/sites/niallmccarthy/2021/06/08/amazon-warehouse-injuries-significantly-higher-than-competitors-infographic/?sh=fa002626854b; https://thesoc.org/wp-content/uploads/2021/02/PrimedForPain.pdf
[7] https://www.coshnetwork.org/national-cosh-reports
[8]https://www.seattletimes.com/business/amazon/amazons-workforce-split-sharply-along-the-lines-of-race-gender-and-pay-new-data-indicates/

GIBSON DUNN

EXHIBIT B

Racial Equity Audit

Resolved
Shareholders of Amazon.com, Inc. ("Amazon") request that the Board of Directors commission a racial equity audit analyzing Amazon's impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on Amazon's business. The audit may, in the board's discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which Amazon operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Amazon's website.

Supporting Statement
The murder of George Floyd, and the public outcry over the killings of other Black men and women, has galvanized the movement for racial justice and equity. This movement has focused the attention of media and policymakers on systemic racism, racial violence, and inequities throughout society. Companies would benefit from assessing the potential risks of their products, services and overall corporate practices that are or are perceived to be discriminatory, racist, or increasing inequalities. Companies that fail to assess these risks could face controversies that result in customer and employee attrition, negative press, significant fines or regulatory inquiries.

In 2020, Amazon tweeted its solidarity with the fight against systemic racism. Since then, Amazon has taken some measures to address racial justice and equity, including committing financial resources and publishing workforce diversity data. However, Amazon faces controversies, some significant, that pose various risks and raise questions related to the company's overall strategy and the company's alignment with its public statements. This includes:

- Controversies related to workforce diversity, treatment of minority workers, environmental justice in communities of color, surveillance and civil rights;
- Lawsuits alleging discriminatory hiring and promotion practices, and alleging failure to protect warehouse workers, who are mostly people of color; and,
- Criticism regarding its products and services, and their adverse impacts on civil rights and communities of color.

There is no public evidence that Amazon is assessing the potential or actual negative impacts of its policies, practices, products, and services through a racial equity lens.

Amazon has stated it is conducting a human rights assessment, which is not an audit conducted by auditors who are experienced in rooting out biases and discrimination. Amazon's assessment would not address the core issues of this proposal, including how Amazon is implementing its racial equity, diversity and inclusion strategy, assessing effectiveness, ensuring sufficient oversight mechanisms, and addressing potential structural impediments and implicit biases.

Furthermore, companies, like Starbucks, still faced risks and controversies related to their impacts on people of color after completing similar human rights reporting. Following those controversies, Starbucks conducted an independent racial equity audit that assisted them in identifying, prioritizing, and implementing improvements.

In 2021, 44 percent of Amazon shareholders supported a proposal seeking such an audit.

Because of the pattern and magnitude of controversies repeatedly facing Amazon, we believe that it is in shareholders' best interests for Amazon to proactively identify and mitigate risks through an independent racial equity audit.

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

JUSTINA K. RIVERA
GENERAL COUNSEL AND DEPUTY
COMPTROLLER FOR LEGAL AFFAIRS

OFFICE OF THE GENERAL COUNSEL

February 25, 2022

By e-mail: shareholderproposals@sec.gov

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Response to Amazon.com, Inc.'s
January 24, 2022 No-Action Request

Dear Counsel:

I write on behalf of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the Board of Education Retirement System of the City of New York (collectively, the "Systems") in response to the letter from Amazon.com, Inc. ("Amazon" or the "Company"), dated January 24, 2022, that informed the staff of the Office of Chief Counsel of the Division of Corporate Finance ("Staff") of the Securities and Exchange Commission ("Commission") that Amazon intends to omit the Systems' shareholder proposal ("Systems' Proposal") from its 2022 proxy materials ("No-Action Request"). As detailed below, Amazon has not met its burden of establishing that the Systems' Proposal may be excluded under Rule 14a-8(i)(11) as substantially duplicative of the earlier shareholder proposal of the New York State Common Retirement Fund, Sisters of the Holy Names of Jesus and Mary, U.S.-Ontario Province, Northwest Women Religious Investment Trust, Congregation of Sisters of St. Joseph of Peace, Praxis Growth Index Fund, and the Robert H. and Elizabeth Fergus Foundation ("Prior Proposal," and together with the Systems' Proposal, the "Proposals"). In particular, the Proposals request different corporate actions and degrees of Board involvement; require different informational inputs; have scopes that only partially overlap and differ substantially in the level of requested granularity, and do not overlap at all with respect to gender-related assessments; examine different impacts; and have different purposes and concerns. Accordingly, the Proposals are not substantially duplicative and the Systems request that the Staff deny Amazon's No-Action Request.

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THE TWO PROPOSALS

The Systems' Proposal[1] states:

> **RESOLVED**: Shareholders urge the Amazon.com ("Amazon") Board of Directors to issue a report, at reasonable cost and excluding proprietary information, examining whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers. Among other things, the report shall include lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity.

The Systems' Proposal is focused on the narrow issue of obtaining greater transparency from Amazon into: (a) workplace injury rates at Amazon's warehouses (including a specific request for the disclosure of "lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity"); (b) how Amazon analyzes any adverse impacts of the Company's health and safety practices on its warehouse workers; (c) whether the Company's health and safety practices give rise to any racial and gender disparities in workplace injury rates; and (d) if such disparities exist, the impact of those disparities on the long-term earnings and career advancement potential of female and minority warehouse workers. The Systems' Proposal requests a report directly from Amazon's Board of Directors ("Board") on these issues; it does not request that the report be prepared by an independent third party, much less informed by input from third-party stakeholders.

The Systems' supporting statement explains why these issues are material to long-term investors. Although Amazon has announced that it is making large investments in its safety and health initiatives, Amazon historically has had very high injury rates at its warehouses, both before and during the COVID-19 pandemic. The rate of serious injuries at Amazon's warehouses is nearly double that of its peers. Additionally, given Amazon's diverse workforce, it is possible that the Company's higher injury rates have disproportionately affected its female and minority warehouse workers. The supporting statement notes that injured workers typically earn 15% less over the ten years following their workplace injury than non-injured workers, and injured workers are more likely to have to rely on support from their families and the taxpayer-supported social safety net. Accordingly, any disparities in workplace injury rates along racial, ethnic, or gender lines may have the effect of perpetuating a variety of societal ills, such as systemic racism and pay inequality for female and minority workers. However, it is not possible for investors to currently determine whether this is the case because Amazon does not publicly disclose the data and information needed to make this determination, including its lost time injury rates (much less a breakdown of that data by race, gender, and ethnicity) or how it analyzes the adverse impacts of its health and safety practices on warehouse workers.

[1] Full copies of the Proposals and their supporting statements are attached as Exhibits A and B to the No-Action Request.

In contrast to the Systems' Proposal, which focuses on racial, ethnic, and ***gender*** disparities within the narrow context of workplace injuries at Amazon warehouses, and the effect of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers, the Prior Proposal focuses on the entirety of the Company's business, but seeks a holistic examination of Amazon's business through a more limited "racial equity lens," without any examination of gender. In full, the Prior Proposal states:

> **Resolved**
> Shareholders of Amazon.com, Inc. ("Amazon") request that the Board of Directors commission a racial equity audit analyzing Amazon's impacts on civil rights, diversity, equity, and inclusion, and the impacts of those issues on Amazon's business. The audit may, in the board's discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which Amazon operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Amazon's website.

The Prior Proposal's supporting statement makes clear that the proposed racial equity audit[2] should be conducted without Company interference by independent third-party auditors "experienced in rooting out biases and discrimination," and with an eye towards examining "the potential or actual negative impacts of [Amazon's] policies, practices, products, and services through a racial equity lens." The supporting statement further identifies the specific "core issues" that should be addressed by any such audit, including "how Amazon is implementing its racial equity, diversity and inclusion strategy, assessing effectiveness, ensuring sufficient oversight mechanisms, and addressing potential structural impediments and implicit biases." There is no mention of gender anywhere in the Prior Proposal.

THE SYSTEMS' PROPOSAL DOES NOT SUBSTANTIALLY DUPLICATE THE PRIOR PROPOSAL

Despite obvious differences in subject matter, scope, and the specific actions requested by the Proposals, Amazon argues that the Systems' Proposal substantially duplicates the Prior Proposal because the Systems' Proposal would have its "core concern" addressed through "implementation of the Prior Proposal and shares the same core concern and principal focus [of the Prior Proposal]." No-Action Request at 12. Amazon's argument fails. We explain in detail below the numerous substantive differences between the two Proposals, from which it follows that the Systems' Proposal *does not* have the same "core concern" or "principal focus" as the Prior Proposal, and implementation of the Prior Proposal *would not* address the core concern of the

[2] The Prior Proposal does not define "racial equity audit." However, it has been defined elsewhere as "an independent, objective and holistic analysis of a company's policies, practices, products, services and efforts to combat systemic racism in order to end discrimination within or exhibited by the company with respect to its customers, suppliers or other stakeholders." Typically, racial equity audits are a "holistic review of the entire company and not just a single aspect such as employment practices." Ron Berenblat and Elizabeth Gonzalez-Sussman, "Racial Equity Audits: A New ESG Initiative," Harvard Law School Forum on Corporate Governance, Oct. 30, 2021, *available at* https://corpgov.law.harvard.edu/2021/10/30/racial-equity-audits-a-new-esg-initiative/.

Systems' Proposal. Thus, the Systems' Proposal cannot be excluded as substantially duplicative of the Prior Proposal.

A. The Substantial Duplication Standard

A company can exclude a shareholder proposal under Rule 14a-8(i)(11) only if the challenged proposal "substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting." Rule 14a-8(i)(11). Upon its release in 1976, the Commission stated that the purpose of this rule is to "eliminate the possibility of shareholders having to consider two or more *substantially identical* proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976) (emphasis added). Consistent with this guidance from the Commission, whether a proposal can be excluded under Rule 14a-8(i)(11) is based on whether the proposal is "substantially identical" to an earlier proposal that will be included in a company's proxy materials. Although the Staff has not identified the specific test it applies to determine whether two proposals are substantially identical,[3] prior no-action determinations do establish that a proposal cannot be excluded under Rule 14a-8(i)(11) simply because it addresses the same general subject as, or has some degree of overlap with, an earlier proposal. *See, e.g., Johnson & Johnson* (Feb. 11, 2022) (proposal seeking a third-party audit assessing and producing recommendations for improving the racial impacts of the company's policies, practices, and products not substantially duplicative of a prior proposal seeking a third-party racial equity audit analyzing the company's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the company's business); *CVS Caremark Corp.* (Mar. 15, 2013) (proposal seeking disclosure of lobbying not duplicative of proposal seeking disclosure of political contributions, even though both proposals related to disclosure of corporate political

[3] The Staff has not addressed how it applies the substantial duplication standard in any of its Staff Legal Bulletins. Additionally, many companies have misread the Staff's determination in *Pacific Gas & Electric Co.* (Feb. 1, 1993) to argue that Staff will find a later proposal to be substantially duplicative of an earlier proposal if the two proposals have the same "principal thrust" or "principal focus." But that reading flips *Pacific Gas* on its head. In *Pacific Gas*, the Staff found that a challenged proposal was *not* substantially duplicative of an earlier shareholder proposal because the challenged proposal had a different "principal thrust" than the "principal focus" of the earlier-submitted proposal. In other words, having a principal thrust that differs from the principal focus of an earlier proposal is *sufficient* to determine that two proposals are *not duplicative*. The Staff never stated or implied that two proposals with the same principal thrust or focus are substantially duplicative. Despite this rather obvious point, Amazon (and many other companies) maintain that "[t]he Staff has traditionally referred to Rule 14a-8(i)(11)'s substantial duplication standard as assessing whether the later proposal presents the same 'principal thrust' or 'principal focus' as a previously submitted proposal." No-Action Request at 5. We are not aware of any Staff no-action determination that has expressly invoked a "principal thrust" or "principal focus" test to conclude that a proposal can be exclude on substantial duplication grounds. We do note that in *Exxon Mobil Corp.* (Mar. 13, 2020), the Staff excluded a proposal focused on corporate lobbying as substantially duplicative of an earlier corporate lobbying-focused proposal because the two proposals "share[d] a concern for seeking additional transparency from [Exxon] about its lobbying activities and how these activities align with [Exxon's] expressed policy positions, of which one is the Company's stated support of the Paris Climate Agreement." However, it is unclear if the Staff intended to announce a new standard in *Exxon* (the "shared concern" language has not been used by the Staff since that determination), and, even if that were the Staff's intent, whether the current Staff still holds the view that a "shared concern" is sufficient to find that a later proposal substantially duplicates an earlier proposal. The Staff's recent determination in *Johnson & Johnson* (Feb. 11, 2022), which addressed two proposals with a "shared concern" of obtaining external, third-party audits of the racial impacts of the company's activities, strongly suggests that the Staff is not applying a "shared concern" standard for substantial duplication. Regardless, even if the current Staff employs a "shared concern" or "principal thrust" standard, we establish below that Amazon has not satisfied that standard.

spending); *Bank of America Corp.* (Jan. 7, 2013) (proposal seeking to end political spending on elections not substantially duplicative of a proposal seeking disclosure of spending on elections); *Pharma-Bio Serv., Inc.* (Jan. 17, 2014) (proposal requesting the establishment of quarterly dividend payment policy not duplicative of a proposal requesting an immediate cash dividend); *Exxon Mobil Corp.* (Mar. 17, 2014) (proposal requesting carbon asset risk report not substantially duplicative of proposal seeking GHG reduction goals, despite shared concern of climate change); *Ford Motor Co.* (Mar. 15, 2005) (proposal seeking lobbying disclosure on federal fuel economy standards not duplicative of a proposal requesting a report on greenhouse gas emissions).

B. The Proposals Request Different Actions and Degrees of Board Involvement

The first critical difference between the Proposals is that they request different actions and degrees of Board involvement. The Systems' Proposal requests that Amazon's Board "issue a report" examining whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers. It does not request that the report be outsourced to any third party that is external and independent from the Board.

In contrast, the Prior Proposal does not ask Amazon's Board to issue a report of any nature. In fact, the general tenor of the Prior Proposal is that the Board, once it has "commissioned" the requested racial equity audit, should step aside and *not* be involved with or oversee the audit. This is because the audit is to be performed by an independent third-party auditor with expertise in rooting out biases and discrimination. Any involvement of the Board in the audit itself would threaten the independence and objectivity of the audit's findings. Accordingly, Amazon's claim that the two Proposals both "ask for Board oversight of the requested review and report" (No-Action Request at 6) is simply false.

C. The Proposals Seek Different Information from Different Sources

The second difference between the two proposals is that the Systems' Proposal does not seek information from any person or entity external to Amazon. Instead, the Systems' Proposal is narrowly focused on the disclosure of concrete factual data and information held (or obtainable) by Amazon, including workplace injury rates broken down by race, gender and ethnicity; information concerning how Amazon analyzes any adverse impacts of the Company's health and safety practices on its warehouse workers; the existence of any racial and gender disparities caused by the Company's health and safety practices; and the quantifiable impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers.

In contrast, the Prior Proposal, because it has as its goal a broad-based, holistic assessment of the racial impacts of Amazon's entire business, seeks information from a range of persons and entities external to Amazon, including "civil rights organizations, employees, communities in which Amazon operates and other stakeholders." This broad input is needed because the racial equity audit is not an internal assessment; it has the separate and distinct concern of providing a

global assessment of "Amazon's impacts on civil rights, diversity, equity and inclusion, *and the impact of those issues on Amazon's business*." There is nothing in the Prior Proposal or its supporting statement suggesting (much less assuring) that the particular factual data and information sought by the Systems' Proposal would be considered or disclosed by the racial equity audit requested in the Prior Proposal. Notably, Amazon never argues that a racial equity audit would disclose this data.

D. The Proposals Have Separate and Distinct Scopes

The third distinction between the Proposals is that the Systems' Proposal is *both* broader and narrower in scope than the Prior Proposal. As noted above, the Systems' Proposal seeks greater transparency into certain factual matters internal to Amazon (*i.e.*, workplace injury rates, broken down by race, ethnicity and gender; how Amazon analyzes adverse impacts of the Company's health and safety practices; whether those health and safety practices give rise to any racial and gender disparities in workplace injury rates; and the impact of any such disparities on the long-term earnings and career advancement potential of its female and minority warehouse workers). The Prior Proposal, on the other hand, seeks a holistic "racial equity audit" of "Amazon's impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on Amazon's business." Such an audit would provide a high-level assessment of "the potential or actual negative impacts of its policies, practices, products, and services *through a racial equity lens*." Accordingly, the scope of Systems' Proposal is broader than the Prior Proposal insofar as it seeks a report that would focus on *both* gender and racial disparities.[4] But the scope of the Systems' Proposal is also substantially narrower in that it is limited to the discrete issue of workplace injuries at Amazon warehouses and their long-term impact on female and minority warehouse workers. The Prior Proposal seeks a global assessment of the potential or actual negative impacts of Amazon's policies, practices, products, and services across its entire business.

E. The Proposals Would Examine Different Impacts

The fourth distinction concerns the different impacts targeted by the Proposals. The Systems' Proposal is squarely focused on whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers. The Prior Proposal, on the other hand, focuses broadly and more generally on "Amazon's impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on Amazon's business." Admittedly, the Prior Proposal's supporting statement does make passing reference to Amazon being sued for its alleged failure to protect warehouse workers, but there is no request that the proposed racial equity audit examine the long-term impact of Amazon's health and safety practices on the career prospects and earning potential of its injured warehouse workers. Furthermore, given the expansive scope of the Prior Proposal, there is little reason to believe that an impact as specific as that raised by the Systems' Proposal (*i.e.*, the long-term earnings and career advancement potential of injured female and minority warehouse workers) would be addressed by a racial equity audit focused on company-wide issues of much greater generality. And there is certainly no reason to believe that a *racial* equity audit would address the impact of

[4] Despite Amazon's suggestion that a racial equity audit would also examine issues faced by female employees, the words "women," "gender," and "female" do not appear anywhere in the Prior Proposal or its supporting statement.

Amazon's health and safety practices on the long-term earning and career advancement potential of its female warehouse workers.

F. The Proposals Have Different Purposes and Concerns

The final, and perhaps most important, distinction is that the Proposals simply do not have a shared purpose or concern. The Prior Proposal's supporting statement sets forth the "core issues" or concerns to be addressed by the racial equity audit: "[1] how Amazon is implementing its racial equity, diversity and inclusion strategy, [2] assessing effectiveness, [3] ensuring sufficient oversight mechanisms, and [4] addressing potential structural impediments and implicit biases." There is nothing in the Systems' Proposal concerning the implementation of any corporate strategy, much less Amazon's "racial equity, diversity and inclusion strategy"; there is no request for an assessment of the effectiveness of that strategy; there is no request for information concerning how Amazon ensures sufficient oversight mechanisms; and there is no request that Amazon explain how it is addressing potential structural impediments and implicit biases. The Systems' Proposal is instead narrowly focused on discrete factual matters concerning Amazon's workplace injury rates, whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates, and the impact of any such disparities on the long-term earnings and career advancement potential of female and minority warehouse workers. Even if there is some high-level (but minimal) degree of overlap between the concerns and purposes of the Proposals (in that both, in some generic sense, would put the racial impact of Amazon's corporate practices under a microscope), there is no reason to believe that a company-wide, holistic racial equity audit conducted at a high level of generality would address the granular, fact-specific issues broached by the Systems' Proposal, especially when those issues include gender.

G. Implementation of the Prior Proposal Would Not Sufficiently Address or Implement the Core Concerns of the Systems' Proposal

Given the numerous substantive differences identified above, Amazon has not established that implementation of the Prior Proposal would sufficiently address or implement the core concerns of the Systems' Proposal. The Proposals request different corporate actions and degrees of Board involvement; require different information for their requested report/audit; have scopes that only partially overlap and differ substantially in the level of requested granularity and concern with gender (or lack thereof); examine different impacts; and have different purposes and concerns. Individually and collectively, these substantial differences provide more than sufficient reason to conclude that the Systems' Proposal does not substantially duplicate the Prior Proposal. Accordingly, Amazon has not satisfied its burden of showing that the Systems' Proposal can be excluded under Rule 14a-8(i)(11).

Although Amazon provides a blunderbuss list of prior no-action determinations that purportedly support its argument, it principally relies on just two determinations, both of which are easily distinguishable and do not support Amazon's argument for substantial duplication. In *Exxon Mobil Corp.* (Mar. 13, 2020), a duplicate proposal was excluded because it "shared a concern for seeking additional transparency from [Exxon] about its lobbying activities and how these activities align with the Company's expressed policy positions, of which one is the Company's stated support of the Paris Climate Agreement." Both proposals in *Exxon* requested

the same action (that the Board prepare and issue a report); sought the same information (if and how Exxon's lobbying activities align with its policy objectives); had the same narrow scope (limited to the Company's lobbying activities); would have the same impact (both reports would corroborate if Exxon's policies were, in fact, aligned with its policies, including support of the Paris Climate Agreement); and had the same purpose and concern (to ensure that Exxon's lobbying activities are in line with the company's policy objectives). The request from the later proposal would thus be covered wholly by the prior proposal. This is plainly different from the Proposals at issue here because, as discussed above, there is no such substantial overlap between the Systems' Proposal and the Prior Proposal.

Amazon also relies heavily on the Staff's determination last year in *Amazon.com, Inc. (John Mixon et al.)* (Apr. 7, 2021) ("*Amazon 2021*"). There, the Staff was unable to concur in the exclusion of three out of four challenged proposals on substantial duplication grounds. Despite broadly overlapping on matters arguably falling under the rubric of "civil rights, equity, diversity, and inclusion," the challenged proposals sought more granular data than the high-level of generality requested in the earlier-submitted proposal (which was nearly identical to the Prior Proposal at issue here). The only challenged proposal that the Staff found duplicative in *Amazon 2021* was an environmental justice proposal that sought a report "describing [Amazon's] efforts … to identify and reduce disproportionate environmental and health harms to communities of color, associated with past, present and future pollution from its delivery logistics and other operations." Unlike the Systems' Proposal, the request from this environmental justice proposal did not seek the disclosure of any specific workplace employment data, broken out along, racial, ethnic and gender lines, and did not articulate any concerns left unaddressed by the racial equity audit proposed by the earlier-submitted proposal, which would address the Company's policies, practices, products, and services across its entire business, including delivery logistics and related operations. Although Amazon claims that the Systems' Proposal is analogous to the environmental justice proposal excluded on substantial duplication grounds in *Amazon 2021*, the Systems' Proposal is in fact more analogous to the "promotion velocity proposal" that Amazon unsuccessfully challenged on substantial duplication grounds. The promotion velocity proposal concerned Amazon's potential disparate treatment of its workers (how quickly employees were promoted) and sought disclosure of promotion velocity rates broken down along racial *and gender* lines so that shareholders could assess whether there was disparate treatment of Amazon's employees along racial and gender lines. In the same way, the Systems' Proposal focuses on the disparate impact that Amazon's health and safety practices may have on its minority and female employees, and specifically requests the disclosure of "lost time injury rates for all warehouse workers, broken down by race, gender and ethnicity." Accordingly, the non-excluded promotion velocity proposal is highly analogous to the Systems' Proposal, and the Systems' Proposal should likewise survive Amazon's No-Action Request.

Also relevant to this No-Action Request is the Staff's determination just two weeks ago in *Johnson & Johnson* (Feb. 11, 2022). There, the earlier-submitted proposal's resolved clause stated:

> **Resolved:** Shareholders of Johnson & Johnson, Inc. ("the Company") request that the Board of Directors commission a racial equity audit analyzing the Company's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the

> Company's business. The audit may, in the board's discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which the Company operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company's website.

The resolved clause of a later-submitted proposal contained a nearly identical request. It stated:

> **Resolved**, shareholders urge the board of directors to oversee a third-party audit (within a reasonable time and at a reasonable cost) which assesses and produces recommendations for improving the racial impacts of its policies, practices and products, above and beyond legal and regulatory matters. Input from stakeholders, including civil rights organizations, employees, and customers, should be considered in determining the specific matters to be assessed. A report on the audit, prepared at reasonable cost and omitting confidential/proprietary information, should be published on the company's website.

Despite the obvious and substantial overlap in the subject matter of the two requested audits—the earlier one requesting a "racial equity audit analyzing the Company's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the Company's business," and the later one requesting a "third-party audit … which assesses and produces recommendations for improving the racial impacts of its policies, practices and products"—the Staff was unable to concur with the company that the later-submitted proposal could be excluded as substantially duplicative of the earlier-submitted proposal. Although the Staff did not specify the basis for its determination, the only substantial difference between the two proposals was that the supporting statements demonstrated the two proposals were coming from separate sides of the political spectrum and requested input from different civil rights groups. Nevertheless, these differences were sufficient for the Staff to conclude that the later-submitted proposal was not substantially duplicative of the earlier-submitted proposal.

The determination in *Johnson & Johnson* demonstrates that the Staff will rigorously examine a no-action request to determine whether the challenged proposal is, in fact, substantially identical to a previously submitted proposal, and will not award no-action relief based on superficial similarities between two proposals, such as an overlap of topics or some degree of shared concerns. The differences between the Systems' Proposal and the Prior Proposal are certainly more pronounced, numerous, and substantial than any of the differences found in *Johnson & Johnson*. Accordingly, the Staff should deny Amazon's No-Action Request here as well.

CONCLUSION

For the reasons set forth above, we respectfully request that Amazon's No-Action Request be denied.

If you have any questions or need additional information, please do not hesitate to contact me at the phone number or email address provided above.

Respectfully submitted,

DocuSigned by:
Justina K. Rivera
4FA7FC017929408...
Justina K. Rivera

cc: shareholderproposals@gibsondunn.com

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March 18, 2022

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Amazon.com, Inc.*
Shareholder Proposal of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the New York City Board of Education Retirement System
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter relates to the no-action request (the "No-Action Request") submitted to the staff of the Division of Corporation Finance (the "Staff") on January 24, 2022 on behalf of our client, Amazon.com, Inc. (the "Company"), in response to the shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") received from the New York City Employees' Retirement System, the New York City Teachers' Retirement System, and the New York City Board of Education Retirement System (collectively, the "Proponents").

The Proposal requests that the Company issue a report examining whether the Company's health and safety practices give rise to any racial and gender disparities in warehouse workers' injury rates, and whether this impacts female and minority warehouse workers' long-term earnings and career advancement potential. In the No-Action Request, the Company demonstrated that the Proposal is properly excludable from the Company's proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (collectively, the "2022 Proxy Materials") pursuant to Rule 14a-8(i)(11) because the Proposal substantially duplicates another proposal (the "Prior Proposal," and together with the Proposal, the "Proposals") that the Company expects to include in its 2022 Proxy Materials.

The Proponents submitted a letter, dated February 25, 2022, setting forth arguments opposing the No-Action Request (the "Proponents' Letter"). The Proponents' Letter argues that the Proposal does not substantially duplicate the Prior Proposal, claiming that the Proposals have

several differences such as in their scope, impact, and purpose, and asserting that the implementation of the Prior Proposal would not sufficiently address the core concerns of the Proposal. This letter addresses those claims.

As an initial matter, the Proponent's Letter, as with the Proposal, is premised on inaccurate, outdated, and mischaracterized information. In particular, the Proponent's Letter does not mention the Company's workplace safety website[1] or its safety report, "Delivered with Care: Safety, Health, and Well-Being at Amazon" (the "Safety Report").[2] The Safety Report sets forth facts that dispel common misconceptions about work and safety conditions at Amazon. Specifically, the Safety Report sets forth data for the Company's U.S. and global fulfillment, sorting, logistics, and retail stores, and compares that data to a number of industries.[3] It reports that nearly 45% of work-related injuries at the Company are related to musculoskeletal disorders (MSDs), which include carpal tunnel syndrome, tendinitis, muscle strains, and lower back injuries.[4] As reflected on pages 11 and 12 of the Safety Report, the Company's 2020 Lost Time Incident Rate—a measure of the number of injuries and illnesses that result in time away from work— was 2.3 globally and 2.6 in the United States (per 200,000 working hours), while its Recordable Incident Rate—which measures how often an injury or illness occurs at work—was 5.1 globally and 6.5 in the United States in 2020. The Safety Report shows the U.S. rates were only slightly higher than rates within the general warehousing and storage industry, were lower than those among couriers and express delivery services, and were generally comparable to those of various retail businesses. Thus, the claims in the Proposal and the Proponent's Letter that the Company's rate of serious injuries at its warehouses is nearly double that of its peers, and that the Company does not publicly disclose workplace injury rates including lost time injury rates, are not accurate.

Seeking to avoid exclusion under Rule 14a-8(i)(11), the Proponents' Letter attempts to recharacterize the Proposal. In particular, the Proponent's Letter seeks to characterize the Proposal as primarily requesting certain statistical information, whereas the actual text of the Proposal requests that the Company's Board "issue a report examining whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers and the impact of any such disparities on the long-term

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[1] *See* https://www.aboutamazon.com/workplace/safety.

[2] *Available at* https://safety.aboutamazon.com/delivered-with-care.

[3] Safety Report at 11. The data excludes performance data from the Company's corporate offices, call centers, and at Amazon Web Services, which would lower reported injury rates.

[4] Safety Report at 14.

earnings and career advancement potential of female and minority warehouse workers." Rather than being the central, narrow focus of the Proposal, its request for statistical information on lost time injury rates for warehouse workers is just one component of the examination and report requested by the Proposal, and is neither the primary nor the leading focus of the Proposal.

Instead, as stated plainly in the Proposal's "Resolved" clause, the Proposal's core concern and primary focus is not on safety statistics, but rather an examination and a report on that examination regarding "whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates among its warehouse workers," and, if so, "the impact of any such disparities." Thus, the core concern and primary focus of the Proposal is an assessment of whether certain aspects of the Company's operations are having adverse impacts on civil rights, diversity, and equity. Likewise, the Prior Proposal requests an examination (referred to as a racial equity audit) and report on whether and how the Company's operations practices impact civil rights, diversity and inclusion, including among the Company's employees, and if so, the nature of such impacts. Accordingly, regardless of whether applying a "substantially identical proposal" test, examining the principal thrust and focus of the Proposals and their supporting statements, or assessing their common concern, the Proposal substantially duplicates the Prior Proposal.

The Proponents' Letter claims that differences in the wording and scope of the Proposal versus the Prior Proposal sufficiently differentiate the two.[5] These differences boil down to the fact that the Prior Proposal, in addition to encompassing the type of review and evaluation called for by the Proposal, also requires a racial equity assessment of other aspects of the Company's operations, as well as an assessment of those issues on the Company's business. However, the fact that an earlier received proposal may have a more expansive scope than a later received proposal has never been determinative under Rule 14a-8(i)(11), as demonstrated through the extensive precedents discussed on pages 4, 5, 10, 11, and 12 of the No-Action Request. This is because conducting the racial equity audit requested under the Prior Proposal would necessarily result in an assessment and report on whether the

[5] Several aspects of the Proponent's Letter likewise distort the terms of the Prior Proposal. For example, the Proponent's Letter asserts that the Prior Proposal requesting a racial equity audit "does not ask Amazon's Board to issue a report of any nature" and that "the general tenor of the Prior Proposal is that the Board, once it has 'commissioned' the requested racial equity audit, should step aside and not be involved with or oversee the audit." In fact, however, the Prior Proposal requests that the Board commission an audit and that "[a] report on the audit … should be publicly disclosed on Amazon's website" and states "[t]he audit may, in the board's discretion, be conducted by an independent third party," but does not require that it be outsourced to an independent third party.

Company's health and safety practices give rise to any racial disparities among the Company's warehouse workers and the impact of such disparities. The one area touched on by the Proposal that is arguably not addressed by the Prior Proposal is the Proposal's explicit reference to both racial and gender diversity. Even here, however, the Proponent's Letter overstates the differences, since an assessment of the impact of the Company's practices on racially and ethnically diverse workers would necessarily assess any impacts on workers of each gender.

Moreover, the Proponent's Letter fails to reconcile its argument with the fact that the Staff has already determined in *Amazon.com, Inc. (John Mixon et al.)* (avail. Apr. 7, 2021) ("*Amazon 2021*") that comparable differences do not prevent a finding that similar proposals were substantially duplicative within the scope of Rule 14a-8(i)(11). As described in the No-Action Request, the Staff determined in *Amazon 2021* that the excluded proposal (the "Mixon Proposal") substantially duplicated a proposal almost identical to the Prior Proposal (the "2021 Prior Proposal"),[6] even though the Mixon Proposal differed in several respects from the 2021 Prior Proposal. As demonstrated in the table below, each difference between the Proposal and the Prior Proposal addressed in the Proponents' Letter also existed as between the Mixon Proposal and the 2021 Prior Proposal. Notwithstanding such differences, the Staff concurred that the Mixon Proposal substantially duplicated the 2021 Prior Proposal, and, because the 2021 Prior Proposal and the Prior Proposal are nearly identical, it therefore follows that the Proposal substantially duplicates the Prior Proposal.

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[6] The "Resolved" clause of the 2021 Prior Proposal reads as follows:

> Shareholders of Amazon.com, Inc. ("Amazon") request that the Board of Directors commission a racial equity audit analyzing Amazon's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on Amazon's business. The audit may, in the board's discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which Amazon operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on Amazon's website.

Proponents' Analysis of the Proposal	How the Proponents' Analysis Also Applies to the Mixon Proposal
"The Proposals Request Different Actions and Degrees of Board Involvement"	
The Proposal "does not request that the report be outsourced to any third party that is external and independent from the Board."	The Mixon Proposal also does not request that preparation of the requested report be outsourced externally or independently.
"The Proposals Seek Different Information from Different Sources"	
The "Proposal does not seek information from any person or entity external to Amazon. Instead, the [Proposal] is narrowly focused on the disclosure of concrete factual data and information held (or obtainable) by Amazon."	The Mixon Proposal also does not seek information from any external sources—it narrowly focuses on disclosure of concrete information on the Company's efforts to identify and reduce any harms to communities of color from the Company's delivery logistics and other operations.
"The Proposals Have Separate and Distinct Scopes"	
The "Proposal seeks greater transparency into certain factual matters internal to Amazon" such as how the Company analyzes adverse, disparate impacts of its health and safety practices on workplace injury rates and the further impact on long-term earnings and advancement potential. "[T]he scope . . . is broader . . . as it seeks a report that would focus on *both* gender and racial disparities" but "is also substantially narrower in that it is limited to the discrete issue of workplace injuries at Amazon warehouses and their long-term impact on female and minority warehouse workers."	The Mixon Proposal seeks greater transparency into certain factual matters internal to the Company; *i.e.*, its efforts to identify and reduce health and environmental harms to communities of color associated with its operations. The scope is broader as the Mixon Proposal addresses impacts on "communities of color," which are defined as zip codes with "majority minority" populations; thus the Mixon Proposal also addressed impact on people who are not

	diverse, but who live in "majority minority" communities.
"The Proposals Would Examine Different Impacts"	
The "Proposal is squarely focused on whether Amazon's health and safety practices give rise to any racial and gender disparities in workplace injury rates and the impact[s] [there]of . . . on the long-term earnings and career advancement potential of female and minority warehouse workers."	The Mixon Proposal is squarely focused on environmental and health impacts of the Company's delivery logistics and other operations on communities of color.
"The Proposals Have Different Purposes and Concerns"	
"There is nothing in the [Proposal] concerning the implementation of any corporate strategy, much less Amazon's 'racial equity, diversity and inclusion strategy'; there is no request for an assessment of the effectiveness of that strategy" or information regarding how the Company "ensures sufficient oversight mechanisms," or that the Company "explain how it is addressing potential structural impediments and implicit biases." "Even if there is some high-level (but minimal) degree of overlap between the concerns and purposes of the Proposals (in that both, in some generic sense, would put the racial impact of Amazon's corporate practices under a microscope), there is no reason to believe that a company-wide, holistic racial equity audit conducted at a high level of generality would address the	Same as the Proposal on all points.

granular, fact-specific issues broached by the [Proposal]."	

As demonstrated in the table above, each aspect of the Proposal that the Proponents' Letter identifies is directly aligned with the Mixon Proposal in *Amazon 2021*. Thus, the differences addressed in the Proponent's Letter are not substantive differences in this context under Rule 14a-8(i)(11).

The Proponent's Letter also attempts to claim that the Proposal is comparable to the "promotion velocity" proposal that also was considered in *Amazon 2021*. However, the promotion velocity proposal did not share the core concern that is common to the Proposal, the Prior Proposal, the Mixon Proposal and the 2021 Prior Proposal (requesting a racial equity assessment). The focus in the promotion velocity proposal was singular—it straightforwardly and singularly requested a public report disclosing promotion velocity rates at the Company by title, gender, and racial identity. Unlike the Proposal, the Prior Proposal, the Mixon Proposal, and the 2021 Prior Proposal, the promotion velocity proposal did not seek any assessment of the impacts of Company operations on racial equities or disparities. Similarly, the promotion velocity proposal did not seek any examination or analysis of how aspects of the Company's operations were affecting civil rights or racial equity.

Furthermore, the Proponents' Letter does not cite any precedent to support its claims that the differences it identifies between the Proposal and the Prior Proposal are relevant for purposes of Rule 14a-8(i)(11), and there are several Staff determinations that demonstrate that such differences are not determinative under Rule 14a-8(i)(11). The Staff has concurred with the exclusion of proposals as substantially duplicative under Rule 14a-8(i)(11) that, for example:

- requested different actions and levels of board involvement (*see Caterpillar Inc.* (avail. Mar. 25, 2013) (concurring with the exclusion of a proposal requesting a report assessing the impact of human rights criticisms and boycott and divestment efforts arising from the company's activities in the occupied Palestinian Territory as substantially duplicative of a proposal requesting that the board review and amend the company's policies related to human rights that guide the company's international and U.S. operations to conform with international human rights standards, and post on the company's website the summary of such review));

- had separate and distinct scopes (*see Exxon Mobil Corp.* (avail. Mar. 13, 2020) (concurring with the exclusion of a proposal requesting a report on how the

company's lobbying activities aligned with the Paris Climate Agreement's goal as substantially duplicative of a proposal requesting a report on the company's lobbying policy and expenditures and the management's oversight thereof));

- would examine different impacts (*see id.*); and
- would have different purposes and concerns (*see id.*; *Caterpillar Inc.* (avail. Mar. 25, 2013)).

In its final argument, the Proponents' Letter cites to the recent determination in *Johnson & Johnson* (avail. Feb. 11, 2022) ("*J&J*"), in which the company received a proposal requesting a third-party audit assessing and producing recommendations for improving the racial impacts of its policies, practices, and products. The Staff did not concur with the exclusion of the proposal as substantially duplicative of a proposal with a "Resolved" clause nearly identical to that of the Prior Proposal. Despite the overt similarity between the "Resolved" clauses, the proponent of the *J&J* proposal argued in its response to the company's no-action request that the underlying concern of the two proposals differed, which may have impacted the Staff's determination. Specifically, the proponent argued that its proposal had a "supporting statement [that was] congruent with the resolved clause," but that the prior proposal had a supporting statement, which, "by contrast, [was] inconsistent with the resolved clause's request." The proponent asserted that the prior proposal "promote[d] a view of 'racial equity' that [was] entirely at odds with the common understanding of that term," and that the prior proposal's supporting statement indicated that anti-racist programs "are themselves deeply racist and otherwise discriminatory," and that "illegal discrimination against employees deemed 'non-diverse' . . . [would be] unforgivable." As such, although the "Resolved" clauses were facially similar, the proponent argued that the underlying concern between the two proposals was diametrically opposed.

In contrast, here the Proposals share a core concern and primary focus, and the Proponents have not demonstrated that the differences between the Proposals are meaningful in a way that would result in clearly distinct issues for shareholders to vote on. Accordingly, we continue to believe that the Proposal may properly be excluded under Rule 14a-8(i)(11).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2022 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8(i)(11).

Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or Mark Hoffman, the Company's Vice President & Associate General Counsel, Corporate and Securities, and Legal Operations, and Assistant Secretary, at (206) 266-2132.

Sincerely,

Ronald O. Mueller

cc: Mark Hoffman, Amazon.com, Inc.
Michael Garland, Office of the Comptroller of the City of New York

Just Share

TD47

Thungela Resources Ltd: Transcript and AGM tracker

Notice of AGM [link]:	Notice of AGM
JSE Code:	TGA
Electronic AGM guide [Link]:	Electronic AGM guide
Board members [Link]:	Board members
Executive team [Link]:	Executive team
Company Secretary:	Francois Klem
AGM date:	31 May 2023
AGM start time:	12h00
AGM end time:	13h15
Duration of AGM:	01h15
Company year-end date:	31 December
AGM type:	Hybrid
Company's Transfer Secretary:	ComputerShare
AGM platform:	ComputerShare
Guests/ media allowed:	Yes
SENS - Proxy voting results [Link]:	Proxy results (save on the server)
Minutes of previous AGM [Link]:	Received from the company – saved on the server
Just Share proxy voting analysis:	Greer
Recording this AGM on Obs?:	Opening address was recorded on Obs – the responses to the questions were recorded on our phones and saved on server
Staff: Just Share representative	Emma – in-person, Greer & Kwanele (electronic participation)
Staff: attended on personal share	Tracey, Robyn and Aya (in-person)
Staff: attended as a guest	SLG

Number of questions asked during AGM: 4 Qs and 0 comment							
CC:	**3**	**Inequality:**	**1**	**Governance:**	**0**	**General:**	**0**

Any relevant shareholder resolutions tabled at this year's AGM:

Yes or no – details.

Commitments made during the previous AGM – to be reviewed/ tracked for progress.

#	Board commitment(s)	By whom
	None	

Commitments made during this AGM

#	Board commitment(s)	By whom
1		
2		
3		
4		

Exec remuneration advisory votes: results and engagement instruction from company

**If remuneration policy or implementation report does not get 75% support – highlight the engagement details/ instructions given by the company to shareholders.*

AGM governance compliance tracker

*Provide feedback to assess whether shareholders have been able to **"participate reasonably effectively"** during this AGM.*

AGM issue	Comments
Verbal/ written questions	Written questions – verbal questions, were dial-in.
Were all questions read out clearly?	Asief and David Le Page has issues asking their questions – but after looking into the reasons, after the AGM, the issues were related to things that David and Asief has done, not Thungela – although the dial-in functionality is limiting.
Were shareholders able to respond to the answers provided by the board/ management?	Yes, board was very engaging and encouraged engagement. Chair event made an indirect comment about Old Mutual's irritation at Just Share asking so many questions.
General feedback – were shareholders able to *"participate reasonably effectively"*	Yes, they were.
Possible engagement with CIPC *Should this company be highlighted as an example of non-compliance?*	No need for engagement.

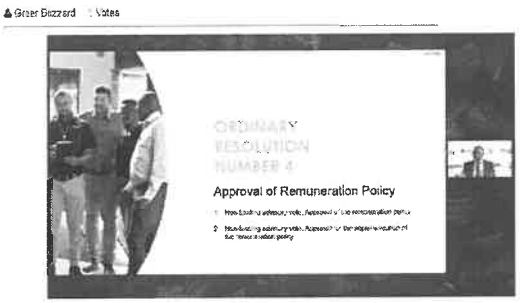
Post-AGM engagement plan (from immediate follow-up, to engagement in 3, 6 or 9 months):

Note what needs to be follow up on, by when, by who and add reminder from the AGM calendar to the relevant team.

General comments about the AGM

Screenshot of board attendance

- About 35 people in attendance in person
- Great video coverage of in the room attendance: could see the room
- Klem opened and welcomed everyone - 2nd AGM
    - Also told us how to vote etc
    - **Dial-in option**
- Sango – next up
    - Properly constituted.
    - Noted a fatality after an accident in 2022. Aiming for fatality free.
    - Read out every word of his address – noted how NB ESG is.
    - Social and Ethics com report was published – shareholders would've read it.
    - Voting: via online system - ComputerShare
    - Acknowledged Thungela had received questions prior to AGM
        - Read all resolutions and then opened for
    - Resolution 5 was withdrawn:
        - General authority for directors to allot and issue ordinary shares" - apparently shareholder weren't happy with this so company withdrew and will engage with shareholders.
- **Q&A**
    - Questions received via email were delt with first. None received.
    - Dial-in questions followed.
    - Then went for questions in the room – raise hands.
    - Tracey's 2 Qs first



Shareholders who wish to ask a verbal question must dial the telephone number:
Telephone number:
+ 27 10 500 2108
Access Code: 954082
Ask the operator to join the Thungela Resources Ltd AGM and they will allow you to speak when prompted by the Chairman of the meeting.

Who was present at the AGM?

Chair:

- Sango Ntsaluba

Director's present:

- July Ndlovu
- Gideon Frederick
- Benjamin Monaheng (Ben) Kodisang
- Kholeka Winifred Mzondeki
- Thero Micarios Lesego Setiloane
- Seamus Gerard French
- Yoza Noluyolo Jekwa

- Francois Klem Company secretary

Agenda, presentations? Other comments about how AGM was conducted?

- After Q&A results readout

Post AGM-engagement

- Colin du Toit – introduced himself to the team: https://www.webberwentzel.com/Specialists/Pages/Colin-du-Toit.aspx

Just Share questions:

Transcriber: Greer **Audio file name:** Tracey-first 2 questions-Risk and scope 3_Thungela AGM **Programme work:** Climate change **Topic:** Risk assessment **Question 1:** Tracey "I will start with a question around Thungela's risk assessment, as explained in its reports. We've noted that this year climate change doesn't make it into the company's top 10 risks as assessed. And we are quite perplexed as to how a pure play coal mining company in 2023, could not really see the seriousness of the significant transition risks posed by imminent local and global regulatory changes and stakeholder pressure, as something to be taken seriously and at least to, to appear in the in the in the top 10 risks facing the company. Mr. Chair, would you like me to ask my other question as well or wait for a response to that one?" **Respondent:** Sango Ntsaluba, Chair "Maybe, let's take one more, and then we deal with those and we'll see how it goes. Thank you very much." **Tracey:** Thank you. Okay, and then my second question relates to Thungela's scope three emissions and your net zero plan. Your scope three emissions comprise 98% of your total greenhouse gas emissions. But the only targets or strategies that you have at present for mitigating those emissions, are related to abated coal, carbon capture and storage, or high-efficiency coal-fired-power-plants, none of which are affordable yet, or feasible as low carbon science align, decarbonisation strategies. When does Thungela, or does Thungela intend on adopting a decarbonisation strategy with short-, medium- and long-term targets? Especially including those most relevant scope three emissions aligned with climate science and the Paris Agreement goal of limiting global warming to 1.5 degrees Celsius? Thank you. **Respondent:** Sango Ntsaluba, Chair "Thank you very much. Thank you. Thank you, Tracey. Firstly, I just want to assure you, that you shouldn't be worried that you might be, that Just Share might be the only one, or not the only one. The question of engagement, as Thungela, we take it quite seriously. So, this is an opportunity for shareholders to raise the points. So, we really appreciate you taking the time to be here. And also, to raise the questions. Let me make a general comment. And I will then ask my CEO, he might decide to direct other colleagues. And by the way, let me also just add something, I might have added in the opening remarks. Present here, in this board meeting, are my colleagues on board, we have already introduced them. They are also available to assist in the response to the questions. We also have got the executives, who are specialists and have detail in all of these issues. They will be supporting me as the chair, the CEO, and also support the board of directors. We mustn't be alarmed by one of our colleagues, the head of HR, because he's got [wearing] a mask, it doesn't mean he doesn't want to answer questions, to answer questions, it's just that he is quite meticulous and careful and conscious of health issues. Before I give over to the CEO, let me assure you, Tracey, Just Share and all the stakeholders. The question of ESG is paramount! And I think we emphasised that to Thungela, it is not a secondary issue. It's not an issue, which is "by the way". So, we consider the issues of climate change as falling within the context of our ESG, as we articulated in the journey we are in and the approach we have. I would just like at the high level, to just give that particular assurance.	**1** **Tracey**

The second one, so that the CEO can respond comprehensively. We have dealt with the path, our Scope 1 and Scope 2, to 2030. And I think we have indicated that Scope 3, of course, I think we all know, the areas relating to Scope 3 are never going to be easy, for anyone. But we're not going to shy away at the appropriate times, to be able to put together systems and processes in order to be able to disclose to everybody, the journey we're taking.

CEO, if you may."

Respondent: July Ndlovu, chief executive officer
"Thanks Chair, in terms of the risk assessment, we do follow a very rigorous process, as we identify the risk assessment. What is quite unique in this, in this set of reports before you, is that if you go to the climate report and you look at our transition risk, we cover the particular risk that you're describing, fairly rigorously and with clarity. What we didn't seek to do, in the climate report necessarily is to rank them per se. But actually to just say this is our response.

And we think that in terms of our approach, our strategic approach, that is the appropriate one.

The fact that we ranked them as top 10, or top 20, does not diminish any one of the risks that we identify significance, we would not have published the report that we did, which we committed to last year, in terms of the Climate Change Response, if we didn't think that climate risk was a significant risk.

Then to your question, I think the Chairman has covered that appropriately. In terms of Scope 3, we're very clear when we announced our, our pathway to net zero, that in the first instance, we're going to deal with Scope 1 and Scope 2, and we're quite pleased with the work that we've done.

Scope 3 is going to be quite a significant piece of work. But what is interesting, Tracey, if you look at what Scope 3 emissions, do they track, are volume of production, and therefore if you actually look at the report, we say "at a glance", which we reported in 2022, you'd see that has Scope 3 emissions reduced from 54 million tonnes to 39 million tonnes. And therefore when we, although we are reporting on 1 and 2, and we say one of the levers we're going to pull, is when production comes to the end, we're not going to replace that production. Like for instance, Isibonelo colliery, when we come to look at our Scope 3, obviously those those will come out. So, we do take that science into account. What we do commit in this report, is we say, as we continue to evolve and improve our response strategy, we will look at Scope 3 and what we can do, in time.

SANGO: WE TAKE ENGAGEMENT SERIOUSLY, HAVE EXECUTIVES PRESENT WHO ARE SPECIALISTS AND WILL BE SUPPORTING US.
THE QUESTION OF ESG IS PARAMOUNT; NOT SECONDARY AND NOT BY THE WAY – SO WE CONSIDERING THE ISSUES OF CC OF FALLING WITHIN THE CONTEXT OF ESG AND IN ARTICULATING OUR JOURNEY – WANT TO GIVE THAT ASSURANCE.

JULY: ON RISK MANAGEMENT, WE DIDN'T RANK PER SE, BUT WE THINK APPROPRIATE ITO OUR STRATEGIC APPROACH; RANKING DOESN'T DIMINISH SIGNIFICANCE AND WOULDNT HAVE PUBLISHED CLIMATE REPORT AS COMMITTED IF DIDN'T THINK A RISK

SANGO: WE HAVE DEALT WITH 1 AND 2 TILL 2030; NOT GOING TO SHY AWAY FROM PUTTING TOGETHER SYSTEMS AND PROCESSES FOR THE JOURNEY FOR SCOPE 3

JULY: QUITE PLEASED WITH WHAT WE HAVE DONE ON SCOPE 1 AND 2 – AND SCOPE 3 TRACKS VOLUME OF PRODUCTION – THEY HAVE REDUCED. WHEN

PRODUCTION COMES TO END WE ARE NOT GOING TO EXTEND SO WE DO TAKE THAT SCIENCE INTO ACCOUNT; AS WE CONTINUE TO EVOLVE AND IMPROVE WE WILL LOOK AT SCOPE 3 AS WE EVOLVE IN TIME.	
Transcriber: Shanet **Audio file name:** **Programme work:** inequality **Topic:** Wage gaps **Question 3:** My question relates to Thungela's reporting on its review of the vertical pay gap, and your measure of income inequality using the total on-target remuneration of employees. Is on-target remuneration realistic as a measure of the pay of the highest paid employees? Given the significant proportion of executive pay made up of STIs and LTIs, doesn't using on-target remuneration result in significantly understated wage gaps? **Respondent:** July Ndlovu, CEO "We do benchmark the executive approach across the industry to understand what is the most appropriate metric to to measure the pay gap. And in this instance, as you can, as you can imagine, conditional pay is not always the most appropriate, because that depends on future performance. And therefore, you tend to look at guaranteed pay, which you calling on target pay as probably the most appropriate measure to look at pay gaps. And remember when you do that, the incentives are not just at executive level, they are also incentives further down. Just to give you a sense, we would ordinarily not include the significant dividends that our employees actually received as a result of the Sisonke payouts in the previous year in terms of assessing that. We think from a sustainable point of view, it's actually not to include those variable pay elements which are not guaranteed. But we continue yearly with advisors, we review what is most appropriate and if in the future there is need for us to change the board will [unclear] and decide the way forward.""	**Aya**
Transcriber: Shanet **Audio file name:** Robyn-Baseline_Thungela AGM **Programme work:** Climate change **Topic:** Baseline **Question 4:** Thungela reports that it has used 2021 as its baseline for measuring scope 1 and 2 emissions reductions, as this was the year it listed as a standalone entity. Your reports indicate that you intend to "fully integrate" Ensham into this baseline once the transaction is completed. Please can you explain how it makes sense to add the emissions from this coal mine to your 2021 baseline from which to measure emission reductions – in other words to increase the baseline emissions as if you owned Ensham in 2021? That would seem to be at odds with the commitment you have made, only this year, to reduce your scope 1 and 2 emissions by 30% by 2030, using 2021 as the baseline. JULY: GOING TO MEET AND WOULD LIKE TO DISCUSS THERE IN DETAIL. WE SET STRATEGICALLY AND WE SAY WE WON'T ACQUIRE GREENFIELDS UNITS, MAY	**Robyn**

ACQUIRE EXISTING UNITS. WHEN ASSESSING BASELINE, EASIEST WAY TO IGNORE IT BUT WE DON'T THINK THAT IS APPROPRIATE WAY TO DO IT. BUT WE ARE ACTUALLY SAYING OUR BASELINE IS MUCH HIGHER. WILL BE HAPPY TO EXPLAIN IN DETAIL.

Follow up

We note that, of the 30% LTIP awards linked to ESG metrics, you have linked 10% to the reduction of operational GHG emissions. Please explain why you have retained the 2016 baseline here, and how the Ensham emissions will be addressed?

Respondent: July Ndlovu, CEO
"Seeing that we going to meet with you guys and take some of these in detail. I'd like to discuss those in a fair amount of detail but let me give you a high-level answer.

We said two things strategically - when we announced our strategy 1) we said the one thing that we consider if we do acquire assets is we are not going to acquire greenfields carbon units. We may acquire existing carbon units and would like to bring them into our portfolio because we want to be transparent. We want to manage them responsibly and Ensham certainly falls into that category.

The second thing that we did, which is what you pointing out is, therefore as we were assessing how much do we have to reduce our scope one, scope two emissions - what is the appropriate baseline to use, given the change that you are describing?

The easiest way to do it, is actually to ignore it out of the baseline. And then just say, you know, it's out there, it's something new, we don't think that's the appropriate way to do. It is sctually to say, therefore, our baseline emissions is much more than what we thought it would because we have now added this, but we commit to reduce off that baseline including those by 30%.

So we've actually done a like for like comparison. The other way to think about it is that whichever asset if we do and when we do acquire an asset would have to have scope one and scope two emissions, aligned to ambition in targets that we have just announced. But I can walk you through the detail and you realise how we have thought about it - we think it is the right way to think about it.

Tracey – asked Follow-up question (GB recorded) [Acquisition and growth]
File: Tracey follow-up to Robyn-Baseline question

"...I understand and hear you about the closures, that you won't be replacing production from it, is that correct?

You said you won't be replacing production from mines as they reach their end of life in South Africa, But you have obviously now embarked on or recently conducted a an acquisition of an overseas coal mine. And that will have an impact on your scope three emissions going forward, of course. I don't know if you can or will answer this question. But is that a one off? Or is that a first step in a broader strategy of acquisition and growth of new coal mines?"

Respondent: Sango Ntsaluba, Chair
"Okay, Tracey, I can thank you very much. First, let me protect the CEO. So that, firstly, he doesn't answer the other part of the question, and I'm sure you were not expecting an answer. For the same reasons that we gave. Or you want to be an insider, then you will be prohibited from trading your shares forever. I think the CEO must say, if he can, if you may just deal with

that particular matter. But I don't think I heard the same thing as you what he was saying but over to you." **Respondent:** July Ndlovu, CEO "The Chairman is right. I mean, I can't comment on our strategy implementation other than what we've already announced. We said we are going to consider diversification of our portfolio for a number of reasons. We said we are single country, single commodity over reliant on a very risky piece of infrastructure and that's why we diversifying. We are in executing of that strategy. And I'm sure, Tracey, you appreciate what the Chairman has just said that I can't comment on what we looking on or not looking on at this stage. When we've got something to announce we will do what is responsible and announce it to the public. The only commitment I can give you is that we will look at it. You probably have seen our investment criteria, that ESG forms a fundamental part of that. Looking at any capital allocation decision we take with that lens."	

MAYBE:

1. ROBYN: Thungela plans to reduce its scope 1 and 2 emissions by 30% by 2030. However, you currently only have plans for procurement of 4MW of renewable energy, of a stated "minimum 19MW" by 2030.

We do note that the company will evaluate the remaining renewable requirement. After this evaluation has been done, can shareholders expect a more robust renewable energy procurement strategy in the upcoming reporting cycle?

2. TRACEY/ROBYN: Your reporting states that, in February 2023, you "secured R3.2 billion in committed facilities with two South African banks with which we have had a longstanding relationship"

Are you able to disclose which banks those were?

Questions asked by other shareholders and by who:

Screenshots or copy/ paste:

Nomsa Sibanda?, All Weather Capital, Portfolio Assistant

Said she had 3 questions – Tracey took her 3rd – scope 3.

Thungela Resources Limited - Annual General Meeting

Greer Blizzard 1 Votes

Thungela Resources Limited - Annual General Meeting

Greer Blizzard 1 Votes

Thungela Resources Limited - Annual General Meeting

Greer Blizzard 1 Votes

Screenshot of voting results:

Closing remarks from

Media coverage:

Any pre-AGM media coverage:

- Xxxxx
- Xxxxx

Any post-AGM media coverage:

- Xxxxx
- Xxxxx

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STANDARD BANK GROUP

Shareholder information and notice of annual general meeting

Standard Bank Moving Forward™
Also trading as Stanbic Bank

To assist in the reduction of the group's carbon footprint, we urge our stakeholders to make use of our reporting site to view our reporting suite at **www.standardbank.com/reporting** or scan the code to be directed to the page.

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We welcome the views of our stakeholders on our reports. Please email your feedback to **InvestorRelations@standardbank.co.za**. You can also use this address to request printed copies of our reports.

Chairman's invitation to shareholders

"I extend an invitation to you to attend the 50th annual general meeting (AGM) of Standard Bank Group Limited (the company) to be held in the HP de Villiers Auditorium, Ground Floor, Standard Bank Centre, 6 Simmonds Street, Johannesburg on Thursday, 30 May 2019 at 09h00."

Thulani Gcabashe
Chairman

Dear Shareholder

The board recognises the importance of its shareholders' presence at the AGM. This is an opportunity for you to participate in discussions relating to items included in the notice of meeting. In addition, the board, including the chairmen of various board-appointed committees, senior members of management, as well as the group's external auditors will be present to respond to questions from shareholders.

If you are unable to attend the AGM and hold shares in certificated form or if you have dematerialised your shares and have elected "own-name" registration through a Central Securities Depository Participant (CSDP) or broker, I would urge you to complete and submit the proxy form in accordance with the instructions and return it to the address indicated.

If you are not able to attend the AGM and have dematerialised your shares on STRATE and have not elected "own-name" registration, I would likewise urge you to submit your voting instructions to your CSDP or broker. If you wish to attend the AGM and have dematerialised your shares on STRATE, and you have not elected "own-name" registration, you will have to approach your CSDP or broker to provide you with the necessary authority in terms of the agreement that you have entered into with them.

Explanatory note on resolutions to be tabled at the AGM

The AGM will deal with the following ordinary business:

- the group's consolidated audited financial statements for the year ended 31 December 2018 (including the directors' report and the audit committee report) will be presented to shareholders. The condensed consolidated financial results are set out within Annexure A from pages 12 to 18 and the complete consolidated audited annual financial statements are available on the group's website at **www.standardbank.com/reporting** (resolution number 1)
- the company's memorandum of incorporation makes provision for the annual retirement of a certain proportion of the board of directors. The directors who retire in terms of this provision and who offer themselves for re-election have their abridged curriculum vitae included in this notice of AGM (resolution number 2)
- the reappointment of the company's joint auditors, KPMG Inc. and PricewaterhouseCoopers Inc. (resolution numbers 3.1 and 3.2)
- resolution 4 provides the directors with the ability to allot and issue ordinary shares up to a maximum of 2.5% of the ordinary shares in issue at 31 December 2018
- the directors' ability to allot and issue non-redeemable, non-cumulative, non-participating preference shares is contained in the provisions of ordinary resolution 5
- to consider and endorse, by way of a non-binding advisory vote, the company's remuneration policy and implementation report (resolution numbers 6.1 and 6.2).

  The full remuneration report is available on the group's website at **www.standardbank.com/reporting.**

The following special resolutions will be tabled for consideration at the AGM:

- a renewal of the authority given by shareholders at the previous AGM that will allow the repurchase of the company's shares by the company or any subsidiary during the course of the year should the directors feel that the circumstances are appropriate. Any repurchases made will be in accordance with the Companies Act 71 of 2008 and the Listings Requirements of the JSE Limited (resolution number 7)
- a general authority by shareholders to permit the repurchase of the company's non-redeemable preference shares by the company or any subsidiary during the course of the year should the directors feel that the circumstances are appropriate. Any repurchases made will be in accordance with the Companies Act 71 of 2008 and the Listings Requirements of the JSE Limited (resolution number 8)
- to give the directors of the company authority to provide financial assistance to any company or corporation that is related or inter-related to the company (resolution number 9).

The following ordinary resolutions have been requisitioned by two shareholders holding less than 0.001% of the issued ordinary shares. This requisitioning is in line with the Companies Act 71 of 2008, section 65(3). Accordingly, although not endorsed by the board for reasons set out in page 9 of this notice of AGM, the following resolutions will be tabled for consideration:

- to report to shareholders by November 2019 on the company's assessment of greenhouse gas emissions resulting from its financing portfolio; and that the company adopt and publicly disclose a policy on lending to coal-fired power projects and coal mining operations (resolution numbers 10.1 and 10.2).

Non-executive directors' fees

The board has resolved to keep non-executive directors' fees unchanged for the 2019 financial year. Accordingly, the 2019 non-executive directors' fees will be paid in accordance with the last shareholder approved fees in line with the provisions of section 66(9) of the Companies Act 71 of 2008. The last shareholder approval of non-executive directors' fees was in 2018.

I look forward to welcoming you at the AGM.

Thulani Gcabashe
Chairman

6 March 2019

Notice to members

Notice is hereby given that the 50th annual general meeting (the meeting or AGM) of Standard Bank Group Limited (Standard Bank Group or SBG or the company) will be held in the HP de Villiers Auditorium, Ground Floor, Standard Bank Centre, 6 Simmonds Street, Johannesburg on Thursday, 30 May 2019 at 09h00.

The board of directors (the board) has determined the record date, to be recorded in the securities register as a shareholder to be able to attend, participate in and vote at the AGM, is Friday, 24 May 2019. The last date to trade, in order to be able to be recorded in the securities register as a shareholder on the aforementioned record date, is Tuesday, 21 May 2019.

The purpose of the meeting is to transact the business set out below, and to consider and, if deemed fit, to pass, with or without modification, the resolutions set out below:

1. Presentation of annual financial statements

To present the annual financial statements for the year ended 31 December 2018, including the reports of the directors and the audit committee.

In order for this resolution to be adopted, it must be supported by more than 50% of the voting rights exercised on the resolution. The condensed consolidated financial results are set out within Annexure A on from pages 12 to 18. The complete consolidated audited annual financial statements are available on the Standard Bank Group's website at **www.standardbank.com/reporting**.

2. Re-election of directors

To elect directors in place of those retiring in accordance with the provisions of the company's memorandum of incorporation. Geraldine Fraser-Moleketi, Martin Oduor-Otieno, André Parker and Myles Ruck are, in line with the company's MOI, retiring by rotation. Being eligible, they offer themselves for re-election.

The MOI stipulates that if a director reaches the age of 70 they shall cease to be a director of the company from the end of the AGM after their seventieth birthday, unless the directors have resolved prior to the convening of the AGM in question that the director shall not retire at that meeting and a statement to that effect is made in the notice convening the meeting. Peter Sullivan has turned 71 and the directors have resolved to extend his term of office by a further year. Peter Sullivan is currently the lead independent director and the chairman of the group remuneration committee.

In order for these resolutions to be approved, each resolution must be supported by more than 50% of the voting rights exercised on the resolution.

Geraldine Fraser-Moleketi, Martin Oduor-Otieno, André Parker, Myles Ruck and Peter Sullivan are independent non-executive directors and their details are as follows:

2.1 Geraldine Fraser-Moleketi (58)

Non-executive director, SBG and SBSA

Appointed to board: 2016
Independent: Yes

Committee membership:
- group/SBSA directors' affairs committee
- group/SBSA risk and capital management committee
- group social and ethics committee

Other governing body and professional positions held:
- UN Committee of experts of Public Administration (chairman)
- Nelson Mandela University (chancellor)
- ISID Advisory Board McGill University Canada
- Mapungubwe Institute for Strategic Reflection

External directorships:
- Exxaro Resources

Qualifications:
- Master's degree in public administration (University of Pretoria), Doctorate in Philosophy (Honoris Causa) (Nelson Mandela University), Fellow of the Institute of Politics (Harvard)

2.2 Martin Oduor-Otieno (62)

Non-executive director, SBG and SBSA

Appointed to board: 2016
Independent: Yes

Committee membership:
- group/SBSA audit committee
- group social and ethics committee

Other governing body and professional positions held:
- SOS Children's Villages International

External directorships:
- GA Life Insurance Company
- British American Tobacco Kenya
- East African Breweries
- Kenya Airways

Qualifications:
- BCom (University of Nairobi), CPA (Kenya), Executive MBA (ESAMI/Maastricht Business School), Honorary Doctor of Business Leadership (KCA University), AMP (Harvard), Fellow of the Institute of Bankers (Kenya)

2.3 André Parker (68)

Non-executive director, SBG and SBSA

Appointed to board: 2014
Independent: Yes

Committee membership:
- group/SBSA directors' affairs committee
- group technology and information committee
- group remuneration committee
- SBSA large exposure credit committee

External directorships:
- Distell
- Empresas Carozzi (Chile)

Qualifications:
BEcon (Hons), MCom (University of Stellenbosch)

2.4 Myles Ruck (63)

Non-executive director, SBG and SBSA

Appointed to board: 2002
Independent: Yes

Committee membership:
- group/SBSA risk and capital management committee (chairman)
- SBSA large exposure credit committee (chairman)
- group/SBSA directors' affairs committee

Appointments held in the group:
- ICBC (Argentina) (vice chairman)

Qualifications:
BBusSc (University of Cape Town), PMD (Harvard)

2.5 Peter Sullivan (71)

Lead independent director, SBG and non-executive director, SBSA

Appointed to board: 2013
Independent: Yes

Committee membership:
- group remuneration committee (chairman)
- group/SBSA audit committee
- group technology and information committee
- group/SBSA risk and capital management committee

External directorships:
- AXA China Region Insurance Company
- AXA Asia
- Techtronic Industries
- Circle Holdings

Qualifications:
BSc (physical education) (University of New South Wales)

3. Reappointment of auditors

The audit committee has evaluated the independence and performance of KPMG Inc. and PricewaterhouseCoopers Inc. and recommend their reappointment as joint auditors of the company.

3.1 "Resolved that KPMG Inc., being an auditor acceptable to the company's audit committee as contemplated by section 90(2)(c) of the Companies Act 71 of 2008, as amended or replaced from time to time (the Companies Act), be and is hereby appointed as the company's auditor in terms of section 90(1A)(b) of the Companies Act for the financial year ending 31 December 2019, subject to the right of the company to terminate that appointment if the company considers any finding adverse to KPMG by the South African Institute of Chartered Accountants or the Independent Regulatory Board for Auditors to be sufficient to justify that termination."

3.2 "Resolved that PricewaterhouseCoopers Inc., being an auditor acceptable to the company's audit committee as contemplated by section 90(2)(c) of the Companies Act, be and is hereby appointed as the company's auditor in terms of section 90(1A)(b) of the Companies Act for the financial year ending 31 December 2019."

If one of the two resolutions proposed above (being resolutions 3.1 and 3.2) is not passed, the approved resolution shall be effective. In order for these resolutions to be approved, each resolution must be supported by more than 50% of the voting rights exercised on the resolution.

4. Placing the authorised but unissued ordinary shares under the control of the directors

"Resolved that the unissued ordinary shares of the company be and are hereby placed under the control of the directors of the company who are authorised to issue the ordinary shares at their discretion until the next AGM of the company, subject to the provisions of the Companies Act, the Banks Act No. 94 of 1990, as amended or replaced from time to time (the Banks Act) and the Listings Requirements of the JSE Limited as amended or replaced from time to time (the Listings Requirements) and subject to the aggregate number of ordinary shares able to be issued in terms of this resolution being limited to two and a half percent (2.5%) of the number of ordinary shares in issue as at 31 December 2018."

In order for this resolution to be approved, it must be supported by more than 50% of the voting rights exercised on the resolution.

5. Placing the authorised but unissued non-redeemable preference shares under the control of the directors

"Resolved that the unissued non-redeemable, non-cumulative, non-participating, variable rate par value preference shares (preference shares) of the company be and are hereby placed under the control of the directors of the company who are authorised to issue the preference shares at their discretion until the next AGM of the company, subject to the provisions of the Companies Act and the Listings Requirements."

In order for this resolution to be approved, it must be supported by more than 50% of the voting rights exercised on the resolution.

6. Non-binding advisory vote on remuneration policy and implementation report

To endorse, by way of separate non-binding advisory votes as recommended by the King IV Report on Corporate Governance for South Africa (King IV) and the Listings Requirements, the company's remuneration policy and implementation report as set out from pages 41 and 54 respectively in the full remuneration report available on the group's website at **www.standardbank.com/reporting**.

Our reward policy and structures are designed to attract, motivate and retain talented people across our group. We need highly skilled and experienced people to drive the growth of our business across Africa and we need to reward them for their performance and the returns they generate for our shareholders. The group's remuneration structures and practices are described more fully in the remuneration report.

6.1 "Resolved to support Standard Bank Group's remuneration policy."

6.2 "Resolved to endorse Standard Bank Group's implementation report relating to the payment of remuneration for the 2018 financial year."

In terms of King IV, shareholders are provided with an opportunity to pass non-binding advisory votes on the group's remuneration policy and remuneration implementation reports. The votes allow shareholders to express their views on the remuneration policy adopted by the group and the implementation thereof, but will not be binding on the group.

Even though these resolutions are non-binding in nature, if the remuneration policy or the implementation report, or both are voted against by 25% or more of the voting rights exercised, the board will, as recommended by King IV and required by the Listings Requirements, implement certain measures, including inviting those shareholders who voted against the policy and/or implementation report to engage with the company to address the matters of concern by such shareholders.

7. General authority to acquire the company's ordinary shares

The directors of the company intend, if the circumstances are appropriate, to implement a repurchase of the company's ordinary shares as permitted in terms of the Companies Act, the Banks Act and the Listings Requirements either by the company or one of its subsidiaries. The purpose of this special resolution is to generally approve, in terms of the provisions of the Companies Act, the acquisition by the company and/or a subsidiary of the company, of ordinary shares issued by it subject to the Listings Requirements.

The directors of the company are of the opinion that taking into consideration the maximum number of ordinary shares that could be repurchased:

- the company and the group would be in a position to repay its debts in the ordinary course of business for a period of 12 months after the date of the notice of this AGM (next year)
- the assets of the company and group, fairly valued in accordance with International Financial Reporting Standards (IFRS), would be in excess of the liabilities of the company and the group for the next year
- the share capital and reserves of the company and the group for the next year will be adequate.

"Resolved as a special resolution that the company approves, with effect from the date of this AGM, as a general approval in terms of the provisions of the Companies Act, as amended or replaced the acquisition by the company and, in terms of the Companies Act, the acquisition by any subsidiary of the company from time to time, of such number of ordinary shares issued by the company and at such price and on such other terms and conditions as the directors may from time to time determine, subject to the requirements of the Banks Act and the Listings Requirements, which at the date of this notice include, amongst others, the following:

- the authority shall be valid only until the next AGM of the company or 15 months from the date on which this resolution is passed, whichever is the earlier;
- any such acquisition will be implemented through the order book operated by the trading system of the JSE Limited and done without any prior understanding or arrangement between the company and the counterparty (reported trades being prohibited);
- the acquisition must be authorised by the company's MOI;
- the authority is limited to the purchase of a maximum of 10% of the company's issued ordinary share capital in any one financial year;
- the acquisition must not be made at a price more than 10% above the weighted average of the market value for the ordinary shares of the company for the five business days immediately preceding the date of acquisition;
- at any point in time, the company may only appoint one agent to effect any repurchase(s) on the company's behalf;
- the company or its subsidiary may not repurchase securities during a prohibited period, unless they have in place a repurchase programme where the dates and quantities of securities to be traded during the relevant period are fixed (not subject to any variation) and has been submitted to the JSE in writing prior to the commencement of the prohibited period. The issuer must instruct an independent third party, which makes its investment decisions in relation to the issuer's securities independently of, and uninfluenced by, the issuer, prior to the commencement of the prohibited period to execute the repurchase programme submitted to the JSE;
- that an announcement containing full details of such acquisitions of shares will be published as soon as the company and/or its subsidiary(ies) has/have acquired shares constituting, on a cumulative basis, three percent (3%) of the number of shares in issue at the date of the general meeting at which this special resolution is considered and, if approved, passed, and for each three percent (3%) in aggregate of the initial number acquired thereafter; and
- in the case of an acquisition by a subsidiary of the company, the authority shall be valid only if:
  - the subsidiary is authorised by its MOI;
  - the shareholders of the subsidiary have passed a special resolution authorising the acquisition; and
  - the number of shares to be acquired is not more than 10% in the aggregate of the number of issued shares of the company."

In order for this resolution to be approved, it must be supported by at least 75% of the voting rights exercised on the resolution.

8. General authority to acquire the company's preference shares

The directors of the company intend, if the circumstances are appropriate, to implement repurchases of the company's non-redeemable, non-cumulative, non-participating, variable rate par value preference shares (preference shares) as permitted in terms of the Companies Act, the Banks Act and the Listings Requirements by the company by means of general repurchases as defined in the Listings Requirements.

The purpose of this special resolution is to generally approve, in terms of the provisions of the Companies Act, the acquisition by the company of preference shares, subject to the Listings Requirements. The directors of the company are of the opinion that, taking into consideration the maximum number of preference shares that could be repurchased:

- the company and the group would be in a position to repay its debts in the ordinary course of business for a period of 12 months after the date of the notice of this AGM (next year);
- the assets of the company and group, fairly valued in accordance with IFRS, would be in excess of the liabilities of the company and the group for the next year; and
- the share capital and reserves of the company and the group for the next year will be adequate.

"Resolved as a special resolution that the company approves, with effect from the date of this annual general meeting, as a general approval in terms of the provisions of the Companies Act, the acquisition by the company from time to time, of such number of preference shares issued by the company and at such price and on such other terms and conditions as the directors may from time to time determine, subject to the requirements of the Banks Act and the Listings Requirements, which at the date of this notice include, amongst others, the following:

- the authority shall be valid only until the next AGM of the company or 15 months from the date on which this resolution is passed, whichever is the earlier;
- any such acquisition will be implemented through the order book operated by the trading system of the JSE Limited and done without any prior understanding or arrangement between the company and the counterparty (reported trades being prohibited);
- the acquisition must be authorised by the company's MOI;
- the authority is limited to the purchase of a maximum of 10% of the company's issued preference share capital in any one financial year;
- the acquisition must not be made at a price more than 10% above the weighted average of the market value for the preference shares of the company for the five business days immediately preceding the date of acquisition;
- at any point in time, the company may only appoint one agent to effect any repurchase(s) on the company's behalf;
- the company may not repurchase securities during a prohibited period, unless they have in place a repurchase programme where the dates and quantities of securities to be traded during the relevant period are fixed (not subject to any variation) and has been submitted to the JSE in writing prior to the commencement of the prohibited period. The issuer must instruct an independent third party, which makes its investment decisions in relation to the issuer's securities independently of, and uninfluenced by, the issuer, prior to the commencement of the prohibited period to execute the repurchase programme submitted to the JSE; and
- that an announcement containing full details of such acquisitions of shares will be published as soon as the company has acquired shares constituting, on a cumulative basis, three percent (3%) of the number of shares in issue at the date of the general meeting at which this special resolution is considered and, if approved, passed, and for each three percent (3%) in aggregate of the initial number acquired thereafter."

In order for this resolution to be approved, it must be supported by at least 75% of the voting rights exercised on the resolution.

9. Loans or other financial assistance to related or inter-related companies

"Resolved as a special resolution that the provision of any financial assistance by the company, subject to the provisions of section 45 of the Companies Act, to any company or corporation which is related or inter-related to the company (as defined in the Companies Act), on the terms and conditions which the directors of the company may determine, be and is hereby approved."

Companies within the group receive and provide loan financing and other support in the course of business. The reason for this special resolution is to grant the directors of the company the authority to provide financial assistance to any company or corporation which is related or inter-related to the company.

In order for this special resolution to be approved, it must be supported by more than 75% of the voting rights exercised on the resolution.

10. Requisition to report on the company's assessment of greenhouse gas emissions, and to adopt and publicly disclose a policy on lending to coal-fired power projects.

These resolutions have been requisitioned by two shareholders holding less than 0.001% of the company's issued ordinary share capital in line with section 65(3) of Companies Act.

"It is resolved that:

10.1 the company should report to shareholders by the end of November 2019, at reasonable cost and omitting proprietary information, its assessment of the greenhouse gas emissions resulting from its financing portfolio and its exposure to climate change risk in its lending, investing and financing activities, including: (i) the amount and percentage of carbon-related assets relative to total assets, and (ii) a description of any significant concentrations of credit exposure to carbon-related assets; and

10.2 the company adopt and publicly disclose a policy on lending to coal-fired power projects and coal mining operations."

Background to the resolutions as provided by the two shareholders

"The Paris Agreement of 2015, agreed to by 197 parties, including South Africa[1], commits to holding the increase in the global average temperature 'to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.'[2]

The Intergovernmental Panel on Climate Change's most recent report announced that even the 2°C degree limit in the Paris Agreement is insufficient to limit the worst impacts of climate change, and that 'rapid, far-reaching changes' must be made to ensure that net emissions of carbon dioxide fall to 45% of 2010 levels by 2030, reaching 'net zero' around 2050, to avoid disastrous levels of global warming.[3]

The World Economic Forum has determined that 'the results of climate inaction are becoming increasingly clear' and ranks extreme weather events and the failure of climate-change mitigation and adaptation as the top two risks facing the world in 2019[4].

Banks' financing choices have a major role to play in promoting carbon reduction. Bank lending and investments make up a significant source of external capital for carbon intensive industries. Every rand invested by South African banks in new fossil fuels increases climate risk, renders it harder to achieve a just transition to a low-carbon economy, and exposes the banks to reputational and financial risks.

The Financial Stability Board's Task Force on Climate-Related Financial Disclosures (TCFD) guidelines for reporting on climate risk establish recommendations for disclosing clear, comparable, and consistent information about the risks and opportunities presented by climate change. The Task Force points to the fact that 'banks are exposed to climate-related risks and opportunities through their lending and other financial intermediary activities as well as through their own operations.'[5]

The TCFD recommendations are designed to facilitate the provision of adequate information to long-term investors on how organisations are preparing for a low-carbon economy. They find that "asset-specific credit or equity exposure to large fossil fuel producers or users could present risks that merit disclosure or discussion in a bank's financial filings" and that stakeholders "need to be able to distinguish among banks' exposures and risk profiles so that they can make informed financial decisions."

The Company reports that, from 2012 to 2017, 83% of its power project financing was for renewable energy compared to 17% for fossil fuel power projects[6]. However, the Company, which is a significant lender in GHG-intensive industries such as oil and gas production and coal mining, does not provide details of the amount and percentage of its carbon-related assets relative to total assets as recommended by the TCFD. Carbon-related assets include those in the energy sector, such as coal, oil and gas. It also does not adequately describe its climate-related risks in its lending and other intermediary roles.

Internationally, increasing numbers of banks have adopted policies to reduce carbon exposure in their loan and investment portfolios, including by ending or substantially reducing financing for new coal-fired power, coal mining, and oil and gas projects. Research from the Institute for Energy Economics and Financial Analysis, released on 27 February 2019, finds that over 100 major global financial institutions have introduced policies restricting coal funding[7]. Despite the Company's acknowledgement that climate change is a 'leading risk for business and society'[8], Standard Bank does not have a have a publicly available statement on climate change. It has also not made publicly available any policy on financing specific fossil fuels such as coal, oil or gas."

1 *South Africa ratified the Paris Agreement on 1 November 2016. See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en*
2 *https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement*
3 *https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/*
4 *https://www.weforum.org/agenda/2019/01/these-are-the-biggest-risks-facing-our-world-in-2019/*
5 *Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures, p 23.*
6 *Standard Bank, Environmental, Social and Governance Report 2017, p. 7*
7 *http://ieefa.org/ieefa-report-every-two-weeks-a-bank-insurer-or-lender-announces-new-coal-restrictions/*
8 *Standard Bank, Report to Society 2017, p. 11*

Company Response

The board acknowledges that:

- section 65 of the Companies Act permits shareholders to table resolutions for voting at the company's AGM;
- as a company with operations across Africa, we are aware of Africa's vulnerabilities to the negative impacts of climate change and that climate change is a global issue facing governments, communities, businesses, and individuals; and
- the most material risks and opportunities relating to climate change result from the company lending to clients with significant greenhouse gas emissions.

The group currently has various measures in place to manage environmental, social and governance (ESG) risk in its lending, and the details of these measures are set out in the company's ESG report. In recognition of the risks presented by climate change, additional steps have been taken to identify, assess, manage and disclose climate change risk in the group's lending portfolios. We are working with our clients to collect and assess data needed to develop and implement a climate change strategy and integrate climate-related risks into our decision-making processes.

The group has also adopted a groupwide policy in relation to its funding of coal-fired power stations. This policy is broadly in line with the OECD Export Credit Agency Coal-Fired Finance Guidelines limiting the financing of coal-fired power generation depending on a country's energy poverty, technology and size of plant. The group undertakes enhanced due diligence when assessing proposals for coal-fired generation, which involves an assessment of the current energy situation in the region and future energy demand, the proposed technology, alternative options, and compliance with relevant laws, treaties, International Finance Corporation (IFC) Performance Standards and IFC Industry Guidelines on thermal power plants, electrical power transmission and distribution.

As the current chair of the Equator Principles Association and an early adopter of the Equator Principles, which are a set of voluntary standards designed to help banks identify and manage social and environmental risks associated with the direct funding of large infrastructure projects such as mines or power stations, we ensure that these principles are applied to all projects that the group finances.

We are working with our clients on green, social and climate bonds; environmental rehabilitation guarantees; lending criteria linked to climate change requirements; and the implementation of green energy solutions. Since 2012, 86% of the company's lending for the construction of power generation was for renewable energy projects.

The group is transparent regarding its approach to reducing the carbon footprint of its own operations and participates in the CDP (formerly known as Carbon Disclosure Project), an international organisation providing a global system for companies to measure, disclose, manage and share vital environmental information.

The group reports annually on its progress in delivering social, economic, and environmental impacts across Africa. The group's Annual Integrated Report, Report to Society and ESG Report are available on the company's website. These reports seek to inform stakeholders of how the company is managing and anticipating material risks to generate sustainable value.

The board does not, however, consider the proposed resolutions as providing shareholders with any more meaningful understanding of the company's climate change risk exposure and risk management, and does not believe the proposed resolutions to be in the best interests of the group at this time. Therefore, the board recommends that shareholders vote against these resolutions.

Reasons for the board's non-endorsement of the proposed resolutions:

1. Banking is extensively and intensively regulated and supervised, both nationally and internationally. There are already significant requirements around reporting lending exposures to the regulatory authorities.

2. The group's clients which operate in South Africa are already required to report their greenhouse gas emissions in terms of the National Greenhouse Gas Emission Reporting Regulation pursuant to the National Environmental Management Act No. 39 of 2004 (Air Quality Act). Furthermore, in South Africa, the forthcoming Carbon Tax is an important policy measure to promote a just transition to a lower carbon economy in line with the Government of South Africa's ratification of the Paris Agreement. Coordinated national and international strategies to reduce greenhouse emissions are the most effective means of responding to climate change.

3. The development and implementation of reliable methodologies to measure the carbon intensity of lending across various portfolios is not well-defined nor agreed. The company will be required to obtain information regarding their emissions from its many business clients operating across the continent (most of whom will know their own carbon footprint). Suitable methodologies and reporting frameworks are still evolving within the banking sector to overcome challenges associated with determining what proportion of client emissions result from the bank-provided finance. A multi-year process needs to be followed to develop credible metrics and targets for financial-related climate risks.

Board recommendation:
Considering the management and reporting activities detailed above, and given that there is, in the board's view, uncertainty as to how the group would practically comply with the proposed resolutions at this time, the board does not consider the proposed resolutions to be in the best interests of the group and its shareholders, and therefore, recommends that shareholders vote against it.

In order for these resolutions to be approved, each resolution must be supported by more than 50% of the voting rights exercised on the resolution.

11. Non-executive directors' fees

The board has resolved to keep non-executive directors' fees unchanged for the 2019 financial year. Accordingly, the 2019 non-executive directors' fees will be paid in accordance with the last shareholder approved fees in line with provisions of section 66(9) of the Companies Act. The last shareholder approval of non-executive directors' fees was obtained in 2018.

Notes in regard to other Listings Requirements applying to resolutions 7 and 8

1. Directors' responsibility statement

The directors, whose names are given from pages 10 to 15 of the governance and remuneration report, collectively and individually accept full responsibility for the accuracy of the information given in these notes 1 to 5 and certify that to the best of their knowledge and belief there are no facts that have been omitted which would make any statement in these notes 1 to 5 false or misleading, and that all reasonable enquiries to ascertain such facts have been made and that the notice contains all information required by law and the Listings Requirements.

2. Major shareholders

Details of major shareholders of the company are set out from page 8 of the annual financial statements.

3. Share capital of the company

Details of the share capital of the group are set out from pages 66 to 70 of the annual financial statements.

4. Material change

There has been no material change in the financial or trading position of the company and its subsidiaries since the date of publication of the company's annual results on 7 March 2019.

5. Litigation

The company is not aware of any legal or arbitral proceedings that may have or had (in at least the preceding 12 months) a material effect on the group's financial position.

Certificated shares

Standard Bank Group shareholders holding certificated shares and shareholders of the company who have dematerialised their shares and have elected own name registration in the sub-register maintained by the CSDP, may attend, speak and vote at the annual general meeting or may appoint one or more proxies (who need not be shareholders of the company) to attend, participate and vote at the annual general meeting on behalf of the such shareholder. A proxy form is attached to this notice of AGM. Duly completed proxy forms must be returned to the transfer secretaries of Standard Bank Group or the registered office of the company to the addresses set out below.

Standard Bank Group shareholders who have dematerialised their shares through a CSDP or broker and who have not elected own name registration in the sub-register maintained by a CSDP and who wish to attend the AGM, should instruct their CSDP or broker to issue them with the necessary authority to attend, or if they do not wish to attend the AGM, they may provide their CSDP or broker with their voting instructions in terms of the custody agreement entered into between such shareholders and their CSDP or broker.

In regard to resolution number 8, the holders of the preference shares shall be entitled to vote. Subject to the provisions of the MOI the holders of the preference shares shall be entitled to that proportion of the total votes in the company which the aggregate amount of the nominal value of the shares held by such holders bear to the aggregate amount of the nominal value of the ordinary and preference shares issued by the company.

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Outlook

Fwd: THUNGELA RESOURCES LIMITED | NOTICE OF ANNUAL GENERAL MEETING AND PROXY

From <redacted>
Date Thu 6/11/2026 12:28 PM
To

1 attachment (3 MB)
Thungela Notice of AGM 2024_web.pdf;

---------- Forwarded message ---------
From: **Computershare Client Services** <Computershare@mailservices.computershare.co.za>
Date: Tue, 29 Apr 2025, 20:37
Subject: THUNGELA RESOURCES LIMITED | NOTICE OF ANNUAL GENERAL MEETING AND PROXY
To: <redacted>

THUNGELA RESOURCES LIMITED | Shareholder Communication

Dear Shareholder

THUNGELA RESOURCES LIMITED

We thank you for receiving our company communication and notices in electronic form.

Please find attached a copy of our 2025 Notice of Annual General Meeting and Proxy.

If you have questions about your shareholding or need to update your details, please visit Investor Centre or Contact us (computershare.com) to reach Computershare, the company's transfer secretary.

Yours sincerely

Thungela Resources Limited

Please visit the following website to read the Computershare legal notice:
http://www.computershare.com/disclaimer/emea-za

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Gold Fields Limited
(Reg. No. 1968/004880/06)
Incorporated in the Republic of South Africa
JSE, NYSE, DIFX Share Code: GFI
ISIN Code: ZAE000018123
("**Gold Fields**" or the "**Company**")

GOLD FIELDS ANNUAL GENERAL MEETING – SUPPLEMENTARY NOTICE

Gold Fields shareholders ("Shareholders") are referred to the announcement published on SENS on 27 March 2025 wherein Shareholders were notified that the Gold Fields annual general meeting ("Notice") will be held in person at 150 Helen Road, Sandown, Sandton on Wednesday, 28 May 2025 at 13:30 South African Standard Time and by electronic participation via the electronic meeting platform (as permitted by the JSE Listing Requirements and the provisions of the Companies Act 71 of 2008, as amended (the "Companies Act")), to transact the business as stated in the Notice. A copy of the Notice can be found on the Company's website at www.goldfields.com.

Subsequent to the distribution of the Notice, Gold Fields has issued a supplementary notice of its annual general meeting ("Supplementary Notice") to confirm, for the avoidance of doubt and given amendments to the Companies Act, that Gold Fields is authorised to provide financial assistance to both local and foreign subsidiaries pursuant to sections 44 and 45 of the Companies Act. In this regard, the Supplementary Notice adds Special Resolution 4 to the resolutions to be considered by Shareholders for adoption at the annual general meeting. Special Resolution 4 is intended to authorise the Company to provide financial assistance pursuant to sections 44 and 45 of the Companies Act on terms and conditions consistent with previous authorisations historically granted by Shareholders to the Company. The Supplementary Notice should be read in conjunction with the Notice and will be distributed to Shareholders today, 7 May 2025 and is also available on the Company's website at www.goldfields.com.

Shareholders are also advised that a revised Form of Proxy (that includes Special Resolution 4) accompanies the Supplementary Notice. To the extent that a Shareholder has already submitted a Form of Proxy in respect of the resolutions contained in the Notice ("Original Proxy Form"), then such Shareholder may either (i) revoke the Original Proxy Form by cancelling it in writing and completing and submitting the revocation together with the revised Proxy Form in accordance with the instructions contained therein and in the Original Notice or (ii), since such Shareholder's votes in terms of the Original Proxy Form remain valid, complete and submit the revised Proxy Form containing only such Shareholder's votes in respect of Special Resolution number 4 as contained in the Supplementary Notice.

All other information pertaining to the Gold Fields annual general meeting, including the salient dates, as announced on SENS on 27 March 2025 remains unchanged.

7 May 2025

For investor enquiries contact:
Jongisa Magagula
Tel: +27 11 562 9775
Mobile: +27 82 562 5288
Email: Jongisa.Magagula@goldfields.com

Thomas Mengel
Tel: +27 11 562 9849
Mobile: +27 72 493 5170
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JSE Sponsor:
J.P. Morgan Equities South Africa (Pty) Ltd

About Gold Fields

Gold Fields is a globally diversified gold producer with nine operating mines in Australia, South Africa, Ghana, Chile and Peru and one project in Canada. We have total attributable annual gold-equivalent production of 2.1 Moz, proved and probable Gold Mineral Reserves of 44.3 Moz, measured and indicated Gold Mineral Resources of 30.4 Moz (excluding Mineral Reserves) and inferred Gold Mineral Resources of 11.6 Moz (excluding Mineral Reserves). Our shares are listed on the Johannesburg Stock Exchange (JSE) and our American depositary shares trade on the New York Exchange (NYSE).

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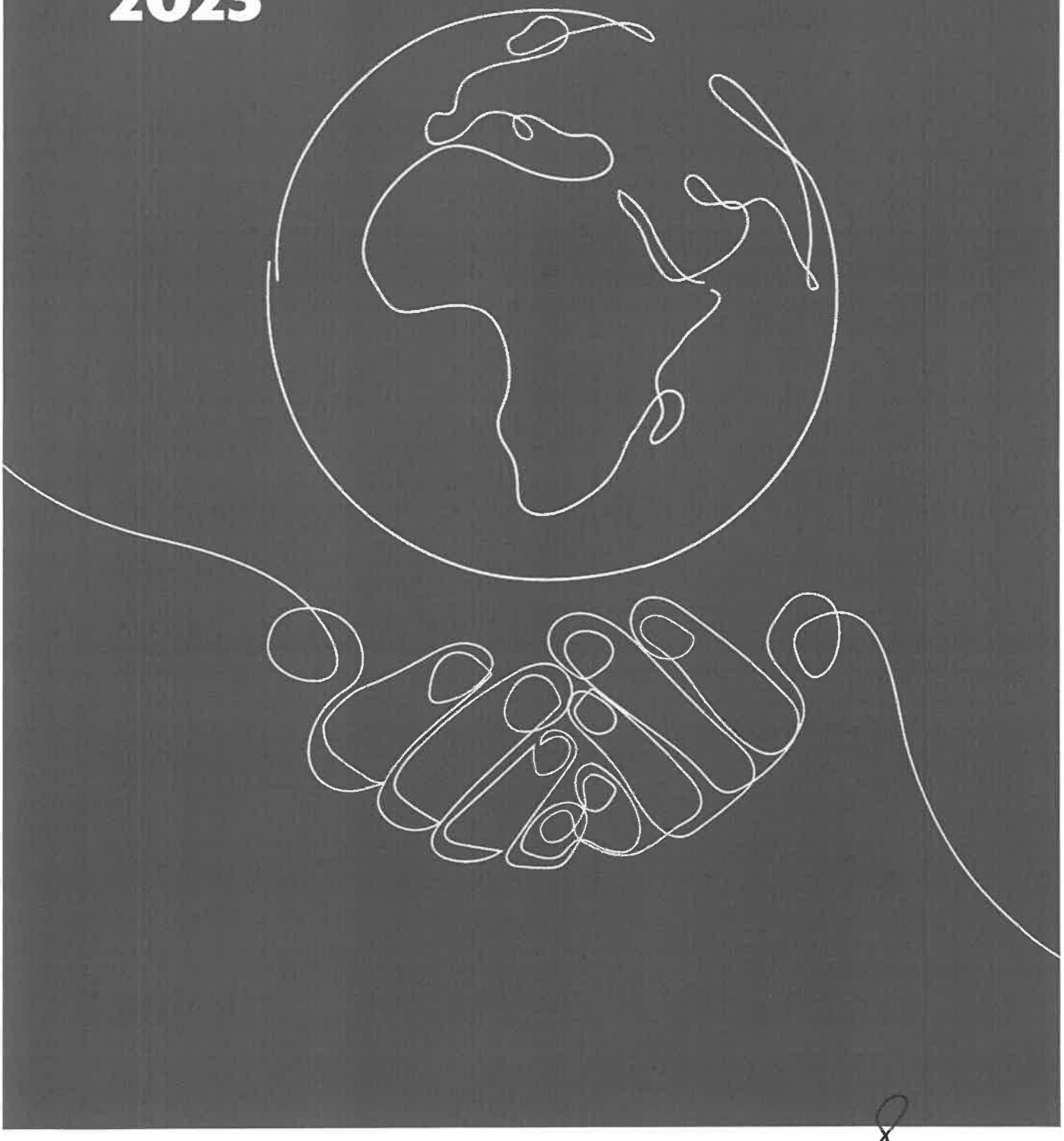
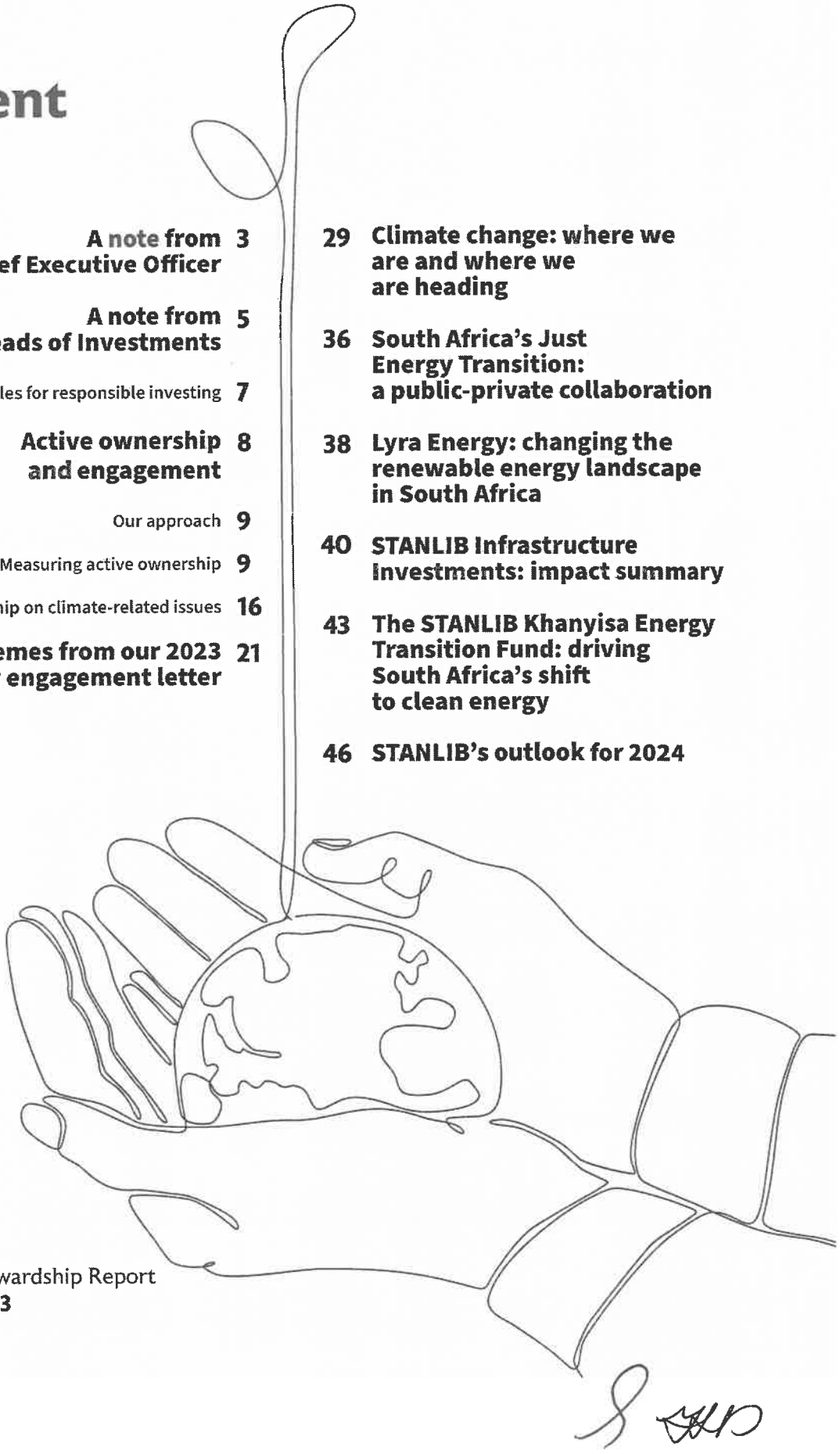
STANLIB

Stewardship Report 2023



STANLIB

Content

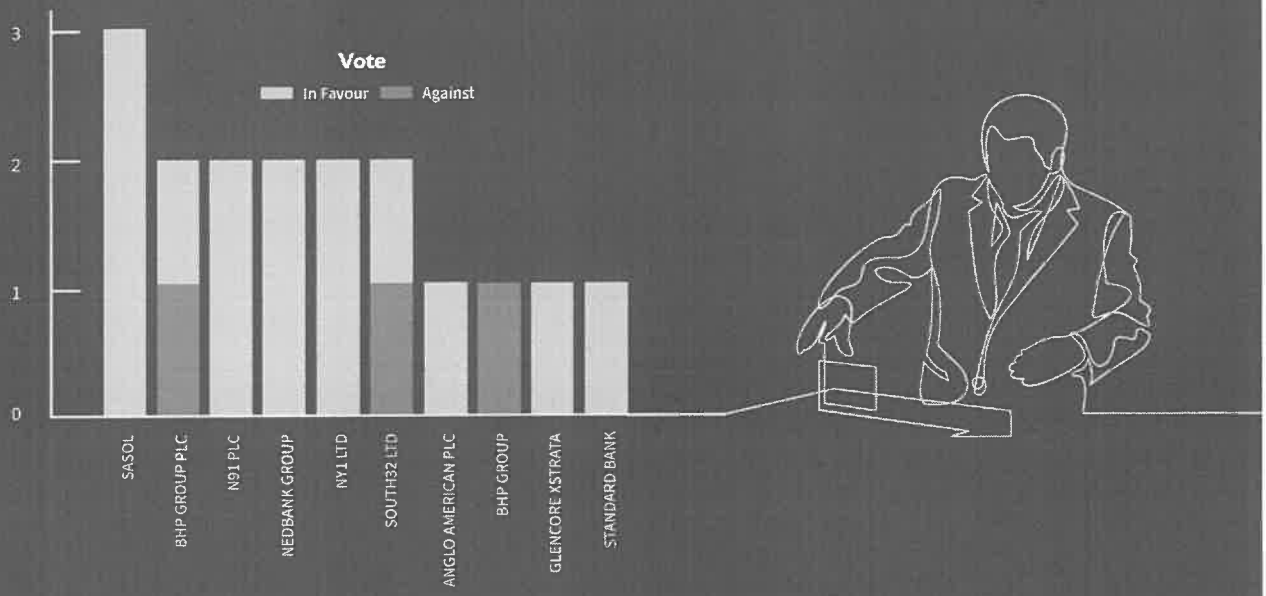


STANLIB

Climate change risk

3-year voting record

Vote count by issuing company



Meeting Date	Issuing Company	Resolution	Comment	Vote
28-05-21	*Nedbank Group Limited*	Committee members' fees: Nedbank Group Climate Resilience Committee		In favour
04-08-21	*N91 PLC*	To approve Ninety One's climate-related financial reporting		In favour
04-08-21	*NY1 Limited*	To approve Ninety One's climate-related financial reporting		In favour
14-10-21	*BHP Group PLC*	Non-binding: climate-related lobbying	This is a shareholder resolution asking the company to suspend membership of industry associations that are inconsistent with the Paris Agreement's goals. STANLIB's view is that it is better to retain membership and advocate for Paris alignment from within.	Against
14-10-21	*BHP Group PLC*	Non-binding: to approve BHP's Climate Transition Action Plan		In favour
28-10-21	*South32 Limited*	Ordinary resolution on climate-related lobbying	This is a shareholder resolution asking the company to suspend membership of industry associations that are inconsistent with the Paris Agreement's goals. STANLIB's view is that it is better to retain membership and advocate for Paris alignment from within.	Against
19-11-21	*Sasol Limited*	To endorse, on a non-binding advisory basis, Sasol's 2021 Climate Change Report	*(refer to the Sasol engagement update below)*	In favour
19-04-22	*Anglo American PLC*	To approve the Climate Change Report 2021		In favour

Source: STANLIB ESG

Meeting Date	Issuing Company	Resolution	Comment	Vote
28-04-22	*Glencore Xstrata PLC*	To approve Glencore's 2021 Climate Progress Report		In favour
27-05-22	*Nedbank Group Limited*	Nedbank Group Climate Resilience Committee		In favour
31-05-22	*Standard Bank Group Limited*	Non-binding advisory resolution requisitioned by Aeon Investment Management and Just Share NPC. By 31 March 2025, update Standard Bank's Climate Policy to include short-, medium-, and long-term targets for the Company's financed GHG emissions from oil and gas, aligned with the Paris Agreement		In favour
26-07-22	*N91 PLC*	To approve Ninety One's Climate Strategy		In favour
26-07-22	*NY1 Limited*	To approve Ninety One's Climate Strategy		In favour
27-10-22	*South32 Limited*	Advisory vote on Climate Change Action Plan		In favour
10-11-22	*BHP Group*	Climate accounting and audit	This is a shareholder resolution requesting the company to include in its audited financial statements information related to its decarbonisation journey. The company contends this might be potentially misleading. Given that BHP has comprehensive climate related disclosures in its 2020 Climate Report and its 2021 Climate Transition Action Plan and is committed to the introduction of IFRS Sustainability Standards STANLIB supports the company by voting against the resolution.	Against
02-12-22	*Sasol Limited*	To endorse, on a non-binding advisory basis, Sasol's climate change management approach as described more fully in its 2022 Climate Change Report	In support of plans and targets. (refer to the Sasol engagement update below)	In favour
26-05-23	*Glencore Xstrata PLC*	Shareholder resolution on the next Climate Action Transition Plan	Promotes increased climate change disclosures.	In favour
26-05-23	*Glencore Xstrata PLC*	To approve Glencore's 2022 Climate Report		In favour
02-06-23	*Nedbank Group Limited*	Nedbank Group Climate Resilience Committee		In favour
26-07-23	*N91 PLC*	To approve Ninety One's Climate Strategy	Climate Strategy aligned to net zero by 2050.	In favour
26-07-23	*NY1 Limited*	To approve Ninety One's Climate Strategy	Climate Strategy aligned to net zero by 2050.	In favour

Year	Company	Objective	Summary	Outcome
2021-23	*JSE-listed companies in our client equity portfolios*	To communicate STANLIB's engagement agenda each year, by highlighting specific focus areas determined from our assessment of common ESG risks across our client portfolios, that could reduce portfolio risks associated with ESG factors relative to the broader equities index and drive sustainable business practices by aligning management interests with long-term incentives.	In the annual letters sent to the respective boards, climate change risk was highlighted as a key focus area on our agenda. Specifically, to encourage sustainability reporting with emphasis on climate risk and adopting the Task Force on Climate-related Financial Disclosures (TCFD) reporting framework; and to understand each company's short- and medium-term reduction targets to mitigate carbon emissions and the feasibility of its goals to transition from fossil fuel to renewable energy.	**Engagement initiated** In terms of sustainability reporting, 48% of the companies in our equity portfolios at the start of 2023 were reporting using the TCFD reporting framework (now International Sustainability Standards Board (ISSB) standards). This is an important first step in understanding the climate risks in our investees. Meanwhile, JSE-listed companies are at varying stages of their journeys to establish carbon emission reduction targets. Some of those examples are included in the engagements below.

Year	Company	Objective	Summary	Outcome
2023	*Thungela Resources*	To *understand* the stranded asset risk of coal mining. The risk of fossil-based assets becoming redundant as the global economy transitions to cleaner energy sources must be appropriately considered in the investment process.	The CEO reiterated the Company's 2050 Net Zero Emissions ambition and made a case for the viability of coal demand over the long term. While the global North is reducing coal consumption, China, together with other low- and middle-income countries, are still ramping up coal consumption for energy production. Peak coal demand in India and China is only expected in 2040 and Thungela is exporting into these demand markets. However, Thungela will not be making any new investments in coal, while the life of existing mines matches decline in coal usage to 2050.	**Engagement initiated** We will continue to track demand and supply and price dynamics of Thungela's coal assets. It is important to continually assess the stranded asset risks across our client portfolios. We will also monitor the progress made against the targets set and engage where there are shortfalls.
Multi-year engagement	*Sasol Limited*	To *influence* Sasol on its climate policy, energy transition strategy and capital allocation plans.	We engaged with Sasol's board and management on its climate change strategy and implementation roadmap. We held seven ESG engagements with Sasol over the past three years on the following topics: 1. Remuneration policy linked to the ESG strategy, such as the introduction of key performance indicators (KPIs) that measure the transition from a high-carbon intensity business to a lower and then low-carbon intensity business. 2. Climate risk and GHG reduction strategy and implementation: At first, management did not commit to net-zero emissions by 2050. However, management has now developed net-zero emissions targets with a clearly defined glide path to reduce emissions. The 2030 goal was enhanced from 10% to 30% GHG reduction. The roadmap is articulated for 2030, but clarity is still awaited for the extended period from 2030 to 2050. This will require a clearer strategy for the use of hydrogen and can be defined in the medium term. Sasol has indicated that there are multiple paths to achieve its 2030 to 2050 goals.	**Further engagement required** We are pleased that the company is aggressively working to enable green hydrogen as an energy source in industrial applications and to reduce its Scope 1 CO_2 emissions by commissioning renewable power plants. However, from the last meeting with investors, our impressions were that management walked back from giving firm 2030 emission reduction targets, despite confirming its 2050 net zero ambition. This, read with the F23 remuneration report, where KPIs related to GHG emission reduction targets were voided, informed our resolve to vote against (at the 2024 meeting) the climate change report and the remuneration policy and implementation report. We remain of the view that the commitment is shifting. Based on that view, we are less inclined to give management the benefit of the doubt with an open-ended Net Zero by 2050 target. As a recent joiner of Climate Action 100+ group, STANLIB has the opportunity to collaborate with peers on reducing emissions at Sasol.
2022	*FirstRand Bank Limited*	To *understand* FirstRand's Climate Risk framework and reporting structure.	Management updated us on: • Own operation's net zero by 2030. • Financed emissions net zero by 2050. • No new coal power structured finance. • TCFD reporting challenges: Scope 1 and 2 emissions are straightforward to calculate, but Scope 3 emissions are extremely complex. • Engaging with top 100 emitters, while also actively reducing and not renewing lending to clients not engaging on GHG emissions reduction.	**Objective achieved** FirstRand has improved its Climate Risk framework and reporting. Some notable improvement in its 2023 reporting. Medium-term targets to reduce Scope 3 emissions from financed emissions have been set. These emissions are disclosed. FirstRand has committed to net zero emissions by 2050 from financed emissions.

Year	Company	Objective	Summary	Outcome
Multi-year engagement	*Exxaro Resources Limited*	To *understand* Exxaro's ESG risks, including climate, and its plans to mitigate them. Exxaro is at the heart of the GHG emissions reduction and the Just Transition debate, given the role it plays as the provider of energy security in SA, and also as an important player in the growing renewable power sector.	We have held four engagements with the Chairperson and management since 2021. The pathway to reducing carbon emissions requires more clarity as there are some complexities. Mitigating the risk of stranded assets and moving to renewables will be enabled by asset sales and investment to reduce coal exposure. Scope 3 emissions can only be managed in partnership with Exxaro's largest clients, Eskom and ArcelorMittal. These factors must be considered against the social implications of a Just Transition.	**Further engagement required** We are tracking progress on the $40m project to reduce the high-carbon intensity of the coal supplied to Eskom. We also continue to seek more clarity on the net zero goals and work under way to map SDGs and measure impact.
2021	*Motus Group Limited*	To *communicate* why we voted against remuneration clauses at the annual general meeting, and to conduct a broader discussion on other ESG issues, particularly the nature of Motus' core business of selling motor vehicles, which results in high GHG emissions.	The Chairman agreed to introduce more transparency and specific details on remuneration in Motus' next Integrated Report. The directors also acknowledged that Motus had not adequately strategically addressed climate change issues relevant to its business. However, management pointed to the progress it had made on water recycling and social issues.	**Ongoing (further engagement required)** All the action points are addressed in the 2023 Integrated Report. TCFD reporting covers environmental and climate-related risks and considerations. ESG is now included and disclosed in the Remuneration Report. Scope 3 emissions are not currently adequately addressed and remain an item for future engagement. (We are not currently holders of Motus Group)
Multi-year engagement	*Eskom Holdings SOC Limited*	To *influence* Eskom to reduce excessive emissions and do so in a socially-responsible manner through the Just Energy Transition plan. Eskom has been on our investment teams' ESG watchlists for some time for numerous E, S and G issues which include climate change risk, solvency, leadership, societal and broader economic impact, legal and regulatory, and other environmental challenges.	Multiple engagements with Eskom management on various ESG issues. The climate-related discussion points include: • The decarbonisation plan, as part of the climate-linked finance deal announced with its COP 26 pathways to the 2050 net zero ambition. • Understanding Eskom commitments under its JET transition, which include ensuring a transition plan for workers affected by coal stations marked for closure. • Plan of action on the Carbon Tax Bill implemented in 2023.	**Ongoing (further engagement required)** Progress on most fronts has been slow. Due to the impact on broader society of the ESG issues facing Eskom, and complexity which includes a multiplicity of stakeholders, STANLIB has now joined Climate Action 100+, and will collaborate with industry peers to drive change at Eskom.

Stewardship Report

2022

CORONATION

TRUST IS EARNED™

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Contents

In line with our Proxy Voting Policy, we continued to vote against granting authority to directors to issue shares generally and unconditionally, and we continued to engage with companies on this matter. We generally discourage resolutions that grant blanket authorities, because these have the potential to result in value dilution, and we believe that shareholders should be able to vote on all issues of share capital. We take a similar view on the general authority to issue shares for cash.

Over the past year we voted on 920 resolutions relating to capital structure, of which 225 (24%) (Figure 20) were dissenting votes. While the spread of these varied depending on the specific proposal put forward by each company, a significant volume of dissenting votes related to requests by companies for authority to issue shares without the need for prior shareholder approval.

As strategic matters relevant to a business are company-specific, information gathering engagements are often imperative for our analysts to construct a complete picture of the operating context and the strategic direction in order to assess the intrinsic value of a business. For example, we engaged with the packaging and paper group Mondi regarding the impact on their business of the energy crisis in Europe and their planned response. They provided comfort that they derive the bulk of their energy from biomass but are also actively looking to mitigate against any gas disruptions that may arise.

Many of our frontier market companies require improved governance and better sustainability disclosure, as well as the opportunity for active investors to improve long-term value through effective engagement. We have engaged with a number of these companies to advocate for progress on company governance as well as more granularity in sustainability reports. An example is East African Breweries, where we requested more ESG data and better disclosure. This included data on carbon emissions, water usage and waste generation statistics, which the company has subsequently provided.

Sustainable finance

With the significant growth in green and sustainability-linked bonds globally, we have engaged on a number of related issues to better understand the proposed targets. In some cases we have requested more measurable targets, challenged whether the penalties are sufficient to induce change and to understand the use of proceeds. One of our engagements was with the South African bank FirstRand, who has, following our engagements, committed to adding a margin penalty should these targets not be met by a set deadline.

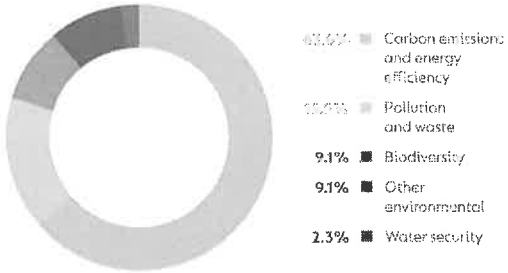
A total of 4.3% of our engagements on strategy, risk management and reporting related to sustainable finance (Figure 28).

Environmental

Carbon emissions and disclosures

Over the past few years, we have placed particular emphasis on encouraging consistent and comparable climate-related disclosure by companies through the adoption of the recommendations of the TCFD.

FIGURE 29: ENGAGEMENTS ON ENVIRONMENTAL MATTERS



In 2022 we continued to monitor the engagement targets from our 2020 and 2021 TCFD project. Additionally, we expanded the scope to include some companies in our Global Emerging Markets portfolios.

Disclosure is an iterative process which requires improvement over time. An example where we requested more granular detail on a company's climate change disclosure is our letter to Amazon (see our case study on page 76).

We also had specific discussions with companies on their plans to increase their procurement of clean energy to reduce carbon emissions and improve energy security during power cuts. This is of particular relevance to South African companies, where the state electricity utility, Eskom, is unable to provide sufficient electricity to meet demand and currently implements regular power cuts to artificially reduce demand. (More details on South Africa's energy crisis on page 63.)

As we transition to a decarbonised economy, we recognise the imperative for a revised global commodity mix, along with the gradual phase out of fossil fuels. We also recognise that while some commodities will need to be phased out over time, others will be required to accelerate the transition to a net zero economy. A detailed understanding of the nuances is therefore necessary in order to engage effectively (see case study on page 69).

As active investors, we engage with those fossil fuel companies in which we are invested to make sure their fossil fuel assets are run down in a responsible manner. For example, we engaged with Glencore to confirm their commitment to a coal run-down strategy. They confirmed that they remain committed to the strategy according to their 2021 Climate Change Report, where they have illustrated no planned expansionary energy capital expenditure, only sustaining capital expenditure. We also met with the chairperson of Exxaro and reiterated our stance that we did not believe further greenfields coal investment was appropriate. The chairman noted our view and confirmed that he is aligned. Furthermore, we engaged with Thungela to express our preference that they do not commit to any greenfields coal investment.

Our engagements covered a variety of issues, such as plastics in the value chain, overfishing, water consumption, food waste reduction initiatives and recycling initiatives.

Other engagements

The loss of biodiversity, concerns surrounding water security, and issues related to waste and pollution are receiving greater attention, especially for companies that have a substantial environmental impact. Our engagements covered a variety of issues, such as plastics in the value chain, overfishing, water consumption, food waste reduction initiatives and recycling initiatives.

We addressed biodiversity concerns related to overfishing in specific regions of operation with the fishing companies Oceana and Sea Harvest. We aimed to understand their approach to responsible fishing and ensure the biomass is kept healthy and community relations are maintained.

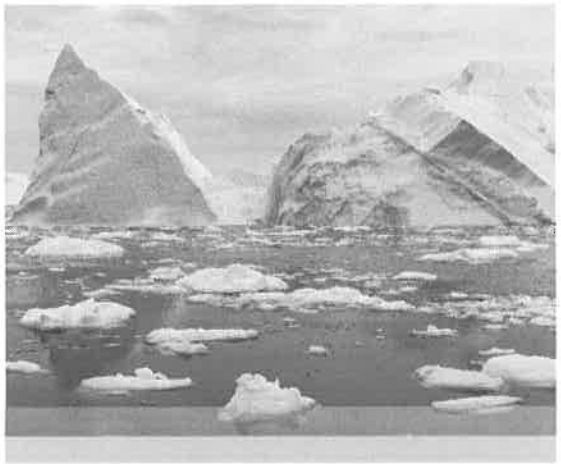
Food waste contributes to global hunger and exacerbates the impacts of climate change. In 2022, we engaged with Woolworths and Oceana to improve our understanding of the challenges surrounding food waste tracking and reduction initiatives. We are currently

researching this topic and will continue to engage on these matters where appropriate.

Climate proposals

Shareholders continue to place pressure on companies to put their climate change strategies to a vote, and many have done so. These strategies commonly address concerns like emission disclosure reports, climate change commitments and the approval of targets, and environmental transition plans. The trend towards putting climate strategies to a shareholder vote indicates that company management recognises the significance of transparent, comprehensive climate strategies.

In 2022, we voted on 30 climate proposals, 14 of which were put forward by shareholders, and 16 put forward by management. We voted in favour of all of these management proposals and eight of the shareholder resolutions, with general support for credible initiatives to mitigate environmental risks, which are expected to enhance long-term company sustainability and performance.



We voted against the two climate-related resolutions put forward at BHP's AGM by a shareholder, the Australasian Centre for Corporate Responsibility.

The first resolution we opposed requested that BHP actively advocate for Australian policy settings that align with the Paris Agreement's objective of limiting global warming to 1.5°C.

The second resolution we did not support was a request for accounting notes in BHP's audited financial statements to contain a sensitivity analysis that includes a scenario aligned with limiting warming to 1.5°C, presenting the quantitative estimates and judgements for all scenarios used and covering all commodities.

In an engagement with management at BHP, they outlined their reasons why they recommended voting against the first resolution. Management felt it would interfere unnecessarily with the board's and management's ability to assess and respond to future public policy developments while taking into account all considerations relevant at that time and acting in the best interests of the company. The resolution's broad and ambiguous nature would require BHP to make a commitment that goes beyond what they believe is appropriate. BHP noted that they already advocate for good climate policy where it aligns with their Global Climate Policy Standards and intend to continue these efforts. They believe they can best support climate policy development by meeting their own climate targets, goals and commitments rather than becoming actively involved in broad public policy.

Management's reasoning for voting against the second resolution outlined that the request for information to be included in the audited financials conflicts with the accounting standards applicable to BHP and believed that the significant uncertainty in the forecasts could be misleading to readers of the Annual Financial Statements (AFS). BHP already provide scenarios in their climate change report which had limited assurance from the auditors and addressed many of the requests made in this resolution. They believed that including a similar but fully audited version in their AFS would be problematic, given the speculative nature of the predictions involved. Instead, BHP confirmed their support of the International Sustainability Standards Board (ISSB) in developing IFRS Sustainability Disclosure Standards which are expected to provide a comprehensive global baseline of sustainability disclosures. BHP indicated that they prefer to align with these standards once they have been finalised.

We agreed with the company's rationale on the above and voted accordingly.

ANNUAL STEWARDSHIP REPORT

momentum investments

Signatory of:
PRI Principles for Responsible Investment

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Foreword

Overview

We participate and collaborate

We protect your investments

We integrate ESG

Climate change

Business sustainability matters

The importance of stewardship in South Africa

Jana Van Rooijen
Responsible Investment Specialist

Integrating environmental, social and governance (ESG) issues into investment decision making and applying stewardship practices are two key parts of our role as a responsible investor, also known as Responsible Investing (RI). The two strategies are complementary to each other, as we integrate these insights to ensure the sustainability of our clients' capital. In this article, we review the concept of stewardship and show how we implement it in practice.

Stewardship means taking ownership — acting as an owner of an asset. This involves using your legal rights by either engaging and voting with investee companies or by engaging with the appointed investment managers who are managing mandates on your behalf.

The importance of stewardship applies to all types of asset classes because the principle of taking ownership is universal.

> **As a responsible investor, you need to understand what you've invested in and address ESG-related matters to protect your investment, regardless of the nature of the asset you own.**

Exclusionary policies, negative screening or divesting from entities are not popular strategies among South African investors. The small, concentrated and declining investable listed universe in South Africa makes exclusionary policies very expensive in terms of lower levels of portfolio returns and higher levels of portfolio risk. Additionally, there is the imperative to invest in opportunities linked to the Just Transition, which means that investors' most valuable mechanism to navigate through the ESG risk landscape is through sound stewardship principles.

Our proxy voting and engagement policies serve as guiding frameworks as we use our investor rights to make decisions and work towards sustainable outcomes with our investee companies. We strongly encourage our investee companies to be transparent and disclose the required ESG-related information to the public. Transparency enables higher quality conversations between the engaging parties, allows for management accountability, and ensures well-informed proxy voting decisions. In turn, investors also have an obligation to be transparent with their clients and ensure actions are evidenced in their Stewardship Report and published voting records on their **website**.

Within the **listed equity asset class**, we believe that full participation is necessary to make a difference. Therefore, we vote on all company corporate resolutions (regardless of our percentage holding in the company) and to never abstain, unless it is a related party of Momentum Group as defined by the Companies Act.

> **Collectively investors have the potential to make a positive impact on the sustainable outcome of South African companies.**

As a signatory to the United Nations-supported Principles for Responsible Investing (PRI), we pre-declare our voting actions of the top-20 shares, by benchmark weight of the FTSE/JSE All Share Index (ALSI), where we have exposure, on the **PRI pre-declaration platform**. The intention is to be transparent in our motivations and advocate to other investors what we believe is best practice.

Climate metrics

We acknowledge climate change as a real risk and manage these climate-related considerations across all the assets we manage. Our investment decarbonisation strategy serves as a guiding framework for the respective investment capabilities within our business. Our aim is to work towards a Just Transition and achieve a low carbon economy while being aligned with the Paris Agreement[1].

Decarbonisation area	Climate metric	Overview	Scope	External data provider	Section
Discretionary assets under management for SA listed equity and fixed income	Temperature alignment	Measure our portfolio alignment to Paris Agreement target as shown in degree Celsius.	Policy holder	MSCI	**1**
Discretionary assets under management for SA listed equity and fixed income	Financed emissions	Attributed emissions and intensity data of our investments. This covers Scope 3 category 15 – Scope 1 and 2 of the investee companies.	Policy holder	MSCI	**2**
Discretionary assets under management for fixed income	Monitoring sovereign holdings	This covers Scope 3 category 15 – production emissions of sovereigns.	Policy holder	MSCI	**3**

1. By Paris Alignment, we mean that MML Ltd will be consistent with the objectives of the Paris Agreement and a country's pathway towards low greenhouse gas emissions and climate-resilient development. Taking into account the principle of common but differentiated responsibilities and respective capabilities, in light of countries' different national circumstances.

Climate metrics

Section 1 Implied Temperature Rise

The Implied Temperature Rise (ITR) metric indicates how well public companies align with global temperature goals. Expressed in degree Celsius, it is an intuitive, forward-looking metric that shows how a company aligns with the ambitions of the Paris Agreement - which is to keep a global temperature rise this century well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5°C.

Implied temperature rise:
The overall implied rise of temperatures of our South African discretionary assets managed within our listed equity and listed fixed income asset classes is:

The issuers within our FYE 2024 portfolio analysis are distributed according to their Implied Temperature Rise showing the number who are aligned with the Paris Agreement and the more ambitious 1.5°C temperature goal.

Implied temperature	Rise categories	% of companies in category
1.5 °C aligned	<= 1.5 °C	13.3%
2 °C aligned	> 1.5 °C - 2 °C	25.2%
Misaligned	> 2 °C - 3.2 °C	41.3%
Strongly misaligned	> 3.2 °C	20.3%

From this distribution, 38.5% of companies are aligned with the goal of limiting temperature increase to below 2°C. 13.3% of companies are aligned with the goal of limiting temperature increase to below 1.5°C.

Source: MSCI

Note
1. By Paris Alignment, we mean that MML Ltd will be consistent with the objectives of the Paris Agreement and a country's pathway towards low greenhouse gas emissions and climate-resilient development, taking into account the principle of common but differentiated responsibilities and respective capabilities, in light of countries' different national circumstances.

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GENERAL NOTICE

NOTICE 1183 OF 2004

South African Company Law for the 21st Century

Guidelines for Corporate Law Reform

May 2004

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The dti wishes to express its appreciation to all South African and international experts who have contributed to the formulation of this policy document. In particular, **the dti** wishes to acknowledge the late Professor Michael Blackman for sharing his extensive knowledge and expertise and for his valuable contributions to this process.

number of close corporations that are registered with the Companies and Intellectual Property Registration Office (CIPRO).

2.2 The need for reform

2.2.1 A changing environment

Internationally, company law review is a continuous process that ensures that the laws are reflective of market practices and societal needs. The South African Companies Act, 1973, is 30 years old and has not been subjected to a comprehensive review to reflect the fundamental developments that have taken place in South Africa and elsewhere.

The domestic and global environment for enterprises has changed markedly since the 1970s. Corporate structures and financial instruments have undergone significant developments. Many old concepts have been abandoned or modified and new concepts have been developed. We now live in a world of greater globalisation, increased electronic communication, greater sensitivity to social and ethical concerns, fast changing markets, greater competition for capital, goods and services. South Africa cannot afford to be left behind. There is a growing recognition by companies and governments that there is a need for higher standards of corporate governance and ethics and greater interdependence between enterprises and the societies in which they operate. A number of corporate failures in South Africa and other jurisdictions have revealed serious defects in the prevailing standard of corporate governance and the administration of the law and have resulted in investors suffering extensive losses.

Socio-political and economic change in South Africa has underscored the need for social responsiveness, transparency and accountability of enterprises. The mobility of international capital has highlighted the need for domestic laws to be investor friendly and competitive with international trends. The rise in international trade and foreign investment since 1994 has made necessary the harmonisation and modernisation of company law, as well as the need to make specific provision for foreign companies to operate in South Africa. This is further underscored by South Africa's reintegration into the region and the role that the country and domestic companies play in the economic development of

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therefore a need to review these rules and to provide more flexibility for companies to raise capital in a global environment that requires responsiveness and innovation.

Current company law also does not contain clear rules regarding corporate governance and the duties and liabilities of directors. These matters have been largely left to common law and Codes of Corporate Practice. Thus, there is no extensive statutory scheme covering the duties and obligations of directors and their accountability in cases of violations. It will be an important part of the review of company law to ensure that directors are made as accountable to shareholders as is practicable. An important aspect of this is the ability for shareholders to remove directors. The review will examine voting agreements and other impediments to the free use of shareholders votes to appoint, remove and replace directors. In addition, significant emphasis will be placed on the need for disclosure and access to information.

Perhaps the most significant deficiency in the current law is that it does not provide effective mechanisms for the enforcement of even those duties prescribed under the present law. The result is that the directors and senior management of large companies are effectively immune from legal control, except perhaps in regard to the more outrageous criminal offences. The lack of enforcement and recourse is in part attributable to the disincentives to litigation created by the court system, such as the under developed nature of class actions and contingency fees and the costs of protracted litigation, which collectively diminish the practical effectiveness of the civil and criminal sanctions and remedies contained in the law. A further significant weakness is the absence of a public institution with the resources and the powers to investigate and enforce the rights of shareholders and other stakeholders. While the Minister of Trade and Industry is empowered in the current law to appoint inspectors and to institute civil litigation on behalf of a company, these actions are inadequately resourced and reactive, based largely on shareholder complaints. The increasing fragmentation of enforcement responsibility opens up the possibility of unequal regulation and regulatory arbitrage between different enforcement agencies.

These factors should be reviewed extensively with a view to balancing access to company information to promote greater shareholder activism, the enforcement of rights and the avoidance of excessive or frivolous litigation.

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Whatever the theoretical merits of this approach, South African law needs to take into account the unique South African context, including the best interests of South Africa and its citizens and the mandates of the Constitution. It is proposed that in the South African context, the company law needs to take account of stakeholders such as the community in which the company operates, its customers, its employees, its suppliers and the environment in certain situations mandated by the Constitution and related legislation. Thus, it is proposed that in the running of a modern South African company consideration has to be given not only to economic factors but also to social and environmental ones. This is what King II refers to as a Triple Bottom Line approach.[50] In South Africa, this is particularly true given its peculiar social and political history.[51] On this approach, company law review in this country would not only follow the world trends but will take into account the country's particular circumstances and the legislative environment.[52]

In view of the above, this policy framework therefore proposes the following model:

> *'a company should have as its objective the conduct of business activities with a view to enhancing the economic success of the corporation, taking into account, as appropriate, the legitimate interests of other stakeholder constituencies'*

In other words, in enhancing economic success of the company (corporate profit and shareholder gain), directors should take account of the policies and principles that are reflected in the Constitution and various kinds of regulation for the benefit of other groups.

This formulation seeks to recognise that if company law is to remain congruent with the Constitution and consequential legislation, the interests of shareholders should be balanced with those of other stakeholders when this is appropriate and/or required by the Constitution and related legislation.[53] South Africa's legislative framework therefore reflects the recognition that the company is a social as well as an economic institution, and accordingly that the company's pursuit of economic objectives should be constrained by social and environmental imperatives, some of which are provided for in legislative enactments.

This means that, unlike the traditional company law position, under the constitutional framework, stakeholder interests, in addition to those of shareholders, have independent

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4.4 Corporate governance

Corporate governance reviews have formed the core of many of the international corporate law reform processes. The focus has been on ensuring increased transparency and accountability and in a number of countries a host of additional requirements, especially in terms of reporting, have been adopted. The emphasis on the reform of corporate governance requirements in the South African context will consist of three components, namely (1) shareholders and investor protection (2) the responsibilities of the board of directors and (3) disclosure. Cognisance will be taken of the broader accountability of managers and directors not only to shareholders, but also to the State and to other stakeholders.

4.4.1 Shareholders and investor protection

One of the key functions of company law is to provide protection for investors in companies. Investors in companies can be described broadly as equity investors, employees and creditors. Employee rights are generally protected in labour law. Large creditors increasingly rely on contract to protect their investment. Equity investors are generally at the greatest risk. They invest their capital in enterprises with the intention of obtaining a return on that capital. Thus, a primary goal of company law should be to ensure that shareholders, as the investors of equity, are granted explicit rights and that they have effective recourse when those rights are violated. While the clear statement of such rights and recourse does provide protection to shareholders, it is equally important that shareholders be educated about those rights and that their statement is easily accessible in the law.

Four basic rights of shareholders can be identified, namely a right to capital, a right to income, a right to vote and a right to information. The ambit of these rights should be determined in legislation, recognising that only the latter two rights are absolute. The section below outlines some initial thoughts in this area, to give content to the proposal:

1) The **right to capital** is primarily concerned with the right to any residual capital that may remain after the winding up, liquidation of the company or when a capital reduction occurs. It is important that all shareholders in the same class are treated

in the same manner. For this reason, share repurchases, if not available equally to all shareholders, should be subject to shareholder approval.

2) The **right to income** refers to the right to dividends or other forms of distributions, if there are surplus profits and a company decision has been made to distribute those profits, rather than to reinvest them. It is important to note that this right is not absolute and is intricately linked with the strategic decisions by the board of directors regarding investment in and expansion of the company. All shareholders in the same class should be treated equally and the law must provide that proportional allotments to shareholders are made in cases of distributions and dividend payments.

3) The **right to vote** is an inalienable right that allows shareholders to have a say in the companies they have invested in. Shareholders of the same class should have the same voting rights and decisions should be made on the basis of the majority of votes, recognising that certain decisions, such as the sale or merger of the company, may require a higher majority. Shareholders also have the right to elect directors. In order to exercise their right to vote, shareholders should be able to call a meeting. Annual General Meetings should remain compulsory, although shareholders of unlisted companies should be able to opt out of this provision with a 90% majority. In order to promote the exercise of the right to vote by shareholders, it is important that certain measures are put in place, including the facilitation of proxy voting and electronic voting. Other measures to consider could include imposing a requirement to publish voting decisions on investors in public companies with a significant shareholding, in particular on institutional investors.

4) The **right to information** includes both the right to receive information and the right to access information. Shareholders should be provided with information that is publicly available, including information presented to analysts. Shareholders should also be presented with sufficient and timeous information in preparation of meetings. There must be full and complete disclosure of material information, with a minimum of annual financial statements. Shareholders of smaller companies should be able to opt out of the requirement for financial statements on the basis of 90% majority, to reduce the costs and compliance burden of smaller companies. In

addition, shareholders should be able to access certain information from the company, upon request. The new company law will set out under which conditions shareholders can access additional information from companies and what type of information may be demanded, in order to minimize the possibility of disputes arising.

It is particularly important that effective remedies are in place for shareholders and investors to enable them to exercise their rights. These remedies are elaborated on in the policy framework under enforcement and administration. Furthermore, exit and appraisal rights should be identified and given content, particularly to provide smaller investors the ability to make informed choices, where they are unable to influence company direction and decisions effectively or to pursue private actions against the company in civil courts.

4.4.2 Directors and the structure of the Board

There has been a question in South Africa for some time whether we should follow the example of continental Europe in establishing a two-tier board or whether a unitary board structure should be required. While a two-tier board provides for the opportunity for stakeholder representation, the European experience has shown that this type of Board structure is often inefficient, may deter investment and is not necessarily desirable for stakeholders. Furthermore, South Africa has largely adopted a unitary board structure to date and imposing a legal requirement for a two-tier structure may be costly. For this reason, the position of this policy document is that a unitary board structure be retained, but that stakeholder representation on that board should be optional. The Swedish model for a unitary board with stakeholder representatives will be examined in greater detail, particularly to determine whether stakeholder representatives could be exempted from certain director's duties.

Another important issue is to clarify the rules governing the conduct of directors in South African companies and the remedies, which are available for violations of the rules. The regulation of director conduct is a very difficult and multi- faceted question. It is commonplace that directors' duties play a fundamental role in ensuring good corporate governance.[59] Indeed, directors' duties serve as a limitation on directors' powers. In South Africa, like in the UK, virtually all legal principles concerning directors' duties are found in

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NOTICE OF ANNUAL GENERAL MEETING 2023

DIRECTORS' RESPONSIBILITY AND APPROVAL OF THE NOTICE OF THE ANNUAL GENERAL MEETING

For the year ended 31 December 2022

The directors are responsible for the preparation, fair presentation and integrity of the Notice of the annual general meeting ('the Notice') and related financial information of the Group.

The summarised consolidated financial statements are based on appropriate accounting policies which have been consistently applied and which are supported by reasonable judgements and estimates made by management.

The information included in this Notice has been extracted from other reports as issued by the Group, including:

- The Summarised Annual Financial Statements for the year ended 31 December 2022.
- The Integrated Annual Report for the year ended 31 December 2022.

Shareholders are encouraged to access these documents for full detail related to the contents of this Notice, and the related approvals thereof. Copies of these documents are available on the Thungela website at www.thungela.com.

APPROVAL OF THE NOTICE OF THE ANNUAL GENERAL MEETING

The Notice on pages 3 to 11 was approved by the board of directors and is signed on the directors' behalf by.

Sango Ntsaluba
Chairperson

July Ndlovu
CEO

26 April 2023

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Responsibly creating value together for a shared future

CONTENTS

NOTICE OF ANNUAL GENERAL MEETING CONTINUED

Ordinary resolution number 3.1

RESOLVED that Ms KW Mzondeki, who is an independent non-executive director, be and is hereby re-elected, with effect from 31 May 2023, as a member of the audit committee.

Ordinary resolution number 3.2

RESOLVED that Mr TML Setiloane, who is an independent non-executive director, be and is hereby re-elected, with effect from 31 May 2023, as a member of the audit committee, subject to the passing of ordinary resolution 2.2.

Ordinary resolution number 3.3

RESOLVED that Mr BM Kodisang, who is an independent non-executive director, be and is hereby re-elected, with effect from 31 May 2023, as a member of the audit committee.

Non-binding ordinary resolution number 4

Approval of the remuneration policy

Shareholder approval is sought for the Company's remuneration policy and implementation thereof by way of separate non-binding advisory votes. The detailed remuneration policy, for which approval is being sought, is included as Annexure 3 on pages 81 to 112 of this document.

Non-binding advisory resolution number 1

RESOLVED that the Company's remuneration policy be and is hereby approved by way of a non-binding advisory vote, as recommended by the King Code of Governance Principles for South Africa 2016 (King IV) (Copyright and trademarks are owned by the Institute of Directors in South Africa NPC and all of its rights are reserved).

Non-binding advisory resolution number 2

RESOLVED that the implementation of the Company's remuneration policy be and is hereby approved by way of a non-binding advisory vote, as recommended by King IV.

Ordinary resolution number 5

General authority for directors to allot and issue ordinary shares

RESOLVED that the unissued shares in the Company be and are hereby placed under the control of the directors until the next AGM. The directors be and are hereby authorised to issue any such shares including options in respect thereof or convertible securities that are convertible into an existing class of equity securities, where applicable as they may deem fit, subject to the requirements of the Companies Act of South Africa, the MOI, the provisions of the JSE Listings Requirements, and the UK Listing Rules.

Ordinary resolution number 6

Authorisation to sign documents to give effect to resolutions

RESOLVED that any one director or the company secretary be and are hereby authorised to do all such things and sign all such documents and take all such actions as they consider necessary to give effect to the resolutions set out in this notice of AGM.

EXPLANATORY NOTES

Ordinary resolution number 1: Re-appointment of independent external auditor

To re-appoint PricewaterhouseCoopers Inc. (PwC) as independent external auditor of the Company and that Mr Andries Rossouw be re-appointed as the individual designated auditor, to hold office until the conclusion of the next AGM in terms of section 90(1) of the Companies Act of South Africa. The audit committee has evaluated the independence, experience and effectiveness of both PwC and Mr Rossouw and has concluded that both the firm and the individual designated auditor are independent of the Company in accordance with section 94(8) of the Companies Act of South Africa.

In compliance with paragraph 3.84(g)(iii) of the JSE Listings Requirements the audit committee obtained and considered all information listed in paragraph 22.15(h) of the JSE Listings Requirements in its assessment of the suitability of PwC as well as Mr Rossouw for re-appointment.

The audit committee concluded that, based on the outcome of the inspection by the Independent Regulatory Board of Auditors of PwC, no matters were raised that negatively impacted the suitability of PwC and Mr Rossouw for re-appointment as external auditor and individual designated auditor, respectively, of the Company.

There are no current pending or finalised legal or disciplinary processes which affect the suitability of PwC or Mr Rossouw for re-appointment as the Company's independent external auditor and individual designated auditor. Further information on the execution of the duties of the audit committee is set out in the report of the audit committee, contained in the Annual Financial Statements which are available at www.thungela.com/investors/results.

In compliance with paragraph 3.86 of the JSE Listings Requirements, the audit committee considered and satisfied itself that:

- PwC, the independent external auditor, is accredited as such on the JSE List of Auditors and Accounting Specialists.
- Mr Andries Rossouw the designated auditor does not appear on the JSE List of Disqualified Individual Auditors.

Ordinary resolution number 2: Re-election of retiring directors

These directors are retiring due to the requirement in the MOI for all newly appointed directors to retire and be eligible for re-election at the first AGM of the Company following their appointment, and for one third of the non-executive directors to retire and be eligible for re-election by rotation at every AGM.

Shareholders are requested to consider and, if deemed fit, to re-elect these retiring directors as members of the board of the Company by way of passing the separate ordinary resolutions as set out in ordinary resolutions number 2.1 to 2.2. Brief résumés in respect of each director offering themselves for re-election as directors of the Company are attached as Annexure 2 on page 80 of this document and are also available at www.thungela.com/who-we-are.

Ordinary resolution number 3: Election of audit committee members

In terms of Regulation 42 of the Companies Regulations, 2011 read with section 94(5) of the Companies Act of South Africa, at least one-third of the members of the Company's audit committee must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

The board has determined that each of the members standing for election is independent, and that they possess the required qualifications, skills and experience as contemplated in Regulation 42 of the Companies Regulations, 2011 read with section 94(5) of the Companies Act of South Africa, and collectively, they have sufficient qualifications and experience to fulfil their duties as contemplated in section 94(7) of the Companies Act of South Africa.

Ordinary non-binding resolution number 4: Approval of the remuneration policy

In accordance with King IV, shareholder approval is sought for the Company's remuneration policy and implementation thereof by way of separate non-binding advisory votes.

The non-binding votes enable shareholders to express their views on the Company's remuneration policy and on the implementation thereof.

In the event that the remuneration policy or the implementation report, or both, have been voted against by 25% or more of the voting rights exercised by shareholders in respect of these non-binding advisory votes, the board will actively engage with shareholders to address and conciliate the substantiating objections and concerns and to ameliorate the policy and/or report as appropriate, taking cognisance of the shareholder feedback and proposals resulting from the engagement and as approved by the board.

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Notice of Annual General Meeting 2024

DIRECTORS' RESPONSIBILITY AND APPROVAL OF THE NOTICE OF ANNUAL GENERAL MEETING

For the year ended 31 December 2023

The directors are responsible for the preparation, fair presentation and integrity of the notice of the annual general meeting (AGM) (the notice) and related financial information of Thungela Resources Limited (Thungela or the Company, and together with its affiliates, the Group).

The summarised consolidated financial statements are based on appropriate accounting policies that have been consistently applied and which are supported by reasonable judgements and estimates made by management.

The information included in this notice has been extracted from other reports as issued by the Group, including:

- The Annual Financial Statements for the year ended 31 December 2023
- The Integrated Annual Report for the year ended 31 December 2023

Shareholders are encouraged to access these documents for full details related to the contents of this notice, and the related approvals thereof. Copies of these documents are available on the Thungela website at www.thungela.com.

APPROVAL OF THE NOTICE OF ANNUAL GENERAL MEETING

The notice on pages 1 to 108 was approved by the board of directors and is signed on the directors' behalf by:

Sango Ntsaluba
Chairman

July Ndlovu
Chief executive officer

24 April 2024

NOTICE OF ANNUAL GENERAL MEETING

CONTINUED

Ordinary resolution number 3

Election of audit committee members

(Comprising separate ordinary resolutions numbered 3.1 to 3.3)

To elect, by way of separate ordinary resolutions, the audit committee consisting of independent non-executive directors in terms of section 94(4) of the Companies Act of South Africa and appointed in terms of section 94(2) to perform the duties and responsibilities stipulated in section 94(7) of the Companies Act of South Africa. The independent non-executive directors, each being eligible, offer themselves for re-election. A brief curriculum vitae for each member is attached as annexure 2 on page 75 of this document.

Ordinary resolution number 3.1

RESOLVED that Ms KW Mzondeki, who is an independent non-executive director, be and is hereby re-elected, with effect from 4 June 2024, as a member of the audit committee.

Ordinary resolution number 3.2

RESOLVED that Mr TML Setiloane, who is an independent non-executive director, be and is hereby re-elected, with effect from 4 June 2024, as a member of the audit committee.

Ordinary resolution number 3.3

RESOLVED that Mr BM Kodisang, who is an independent non-executive director, be and is hereby re-elected, with effect from 4 June 2024, as a member of the audit committee, subject to the passing of ordinary resolution number 2.2.

Non-binding ordinary resolution number 4

Approval of the remuneration policy

Shareholder approval is sought for the Company's remuneration policy and implementation thereof by way of separate non-binding advisory votes. The detailed remuneration policy, for which approval is being sought, is included as annexure 3 on pages 76 to 101 of this document.

Non-binding advisory resolution number 1

RESOLVED that the Company's remuneration policy be and is hereby approved by way of a non-binding advisory vote, as recommended by the King Code of Governance Principles for South Africa 2016 (King IV*).

Non-binding advisory resolution number 2

RESOLVED that the implementation of the Company's remuneration policy be and is hereby approved by way of a non-binding advisory vote, as recommended by King IV.

Ordinary resolution number 5

General authority for directors to allot and issue ordinary shares

RESOLVED that the unissued shares in the Company, limited to 10% of the shares in issue at the date of this notice, being 140,492,585 shares, be and are hereby placed under the control of the directors until the next AGM. The directors be and are hereby authorised to issue any such shares, including options in respect thereof or convertible securities that are convertible into an existing class of equity securities, where applicable as they may deem fit, subject to the requirements of the Companies Act of South Africa, the MOI, the provisions of the JSE Listings Requirements, and the United Kingdom Listing Rules.

Ordinary resolution number 6

Authorisation to sign documents to give effect to resolutions

RESOLVED that any one director or the company secretary be and are hereby authorised to do all such things and sign all such documents and take all such actions as they consider necessary to give effect to the resolutions set out in this notice of AGM.

EXPLANATORY NOTES

Ordinary resolution number 1

Re-appointment of independent external auditor

To re-appoint PwC as independent external auditor of the Company and that Ms Vuyiswa Khutlang be appointed as the individual designated auditor, to hold office until the conclusion of the next AGM in terms of section 90(1) of the Companies Act of South Africa. The audit committee has evaluated the independence, experience and effectiveness of both PwC and Ms Khutlang and has concluded that both the firm and the individual designated auditor are independent of the Company in accordance with section 94(8) of the Companies Act of South Africa.

In compliance with paragraph 3.84(g)(ii) of the JSE Listings Requirements the audit committee obtained and considered all information listed in its assessment of the suitability of PwC as well as Ms Khutlang for appointment.

The audit committee concluded that, based on the outcome of the inspection by the Independent Regulatory Board of Auditors of PwC, no matters were raised that negatively impacted the suitability of PwC for re-appointment as external auditor and Ms Khutlang for appointment and the individual designated auditor, respectively, of the Company.

There are no current pending or finalised legal or disciplinary processes which affect the suitability of PwC or Ms Khutlang for appointment as the Company's independent external auditor and individual designated auditor. Further information on the execution of the duties of the audit committee is set out in the report of the audit committee, contained in the Annual Financial Statements which are available at www.thungela.com/investors/results.

The audit committee considered and satisfied itself that both PwC, the independent external auditor, and Ms Vuyiswa Khutlang the designated auditor complies with the requirements of paragraph 3.86 of the JSE Listings Requirements.

Ordinary resolution number 2

Re-election of retiring directors

These directors are retiring due to the requirement in the MOI for one-third of the non-executive directors to retire and be eligible for re-election by rotation at every AGM.

Shareholders are requested to consider and, if deemed fit, to re-elect these retiring directors as members of the board of the Company by way of passing the separate ordinary resolutions as set out in ordinary resolutions number 2.1 to 2.2. Brief résumés in respect of each director offering themselves for re-election as directors of the Company are attached as annexure 2 on page 75 of this document and are also available at www.thungela.com/who-we-are.

Ordinary resolution number 3

Election of audit committee members

In terms of Regulation 42 of the Companies Regulations, 2011 read with section 94(5) of the Companies Act of South Africa, at least one-third of the members of the Company's audit committee must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

The board has determined that each of the members standing for election is independent, and that they possess the required qualifications, skills and experience as contemplated in Regulation 42 of the Companies Regulations, 2011 read with section 94(5) of the Companies Act of South Africa, and collectively, they have sufficient qualificotions and experience to fulfil their duties as contemplated in section 94(7) of the Companies Act of South Africa.

Ordinary non-binding resolution number 4

Approval of the remuneration policy

In accordance with King IV, shareholder approval is sought for the Company's remuneration policy and implementation thereof by way of separate non-binding advisory votes.

The non-binding votes enable shareholders to express their views on the Company's remuneration policy and on the implementation thereof.

In the event that the remuneration policy or the implementation report, or both, have been voted against by 25% or more of the voting rights exercised by shareholders in respect of these non-binding advisory votes, the board will actively engage with shareholders to address and conciliate the substantiating objections and concerns and to ameliorate the policy and/or report as appropriate, taking cognisance of the shareholder feedback and proposals resulting from the engagement and as approved by the board.

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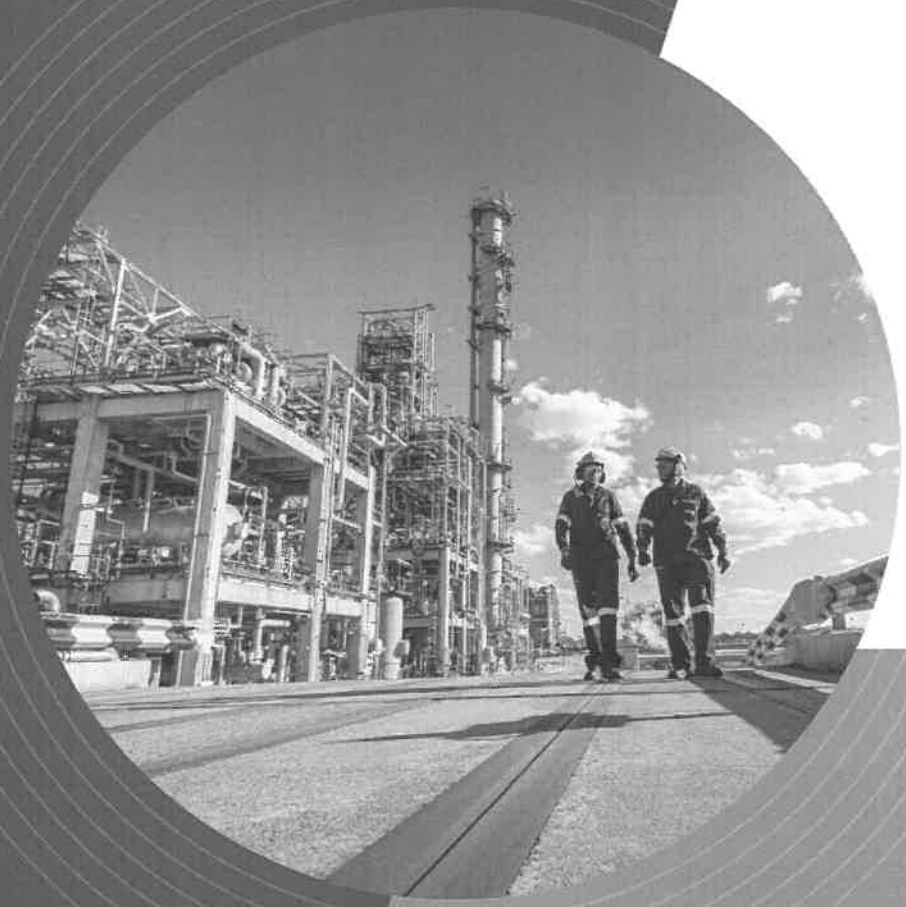

SASOL LIMITED

NOTICE OF ANNUAL GENERAL MEETING
for the year ended 30 June 2025

AGM

BUILDING CREDIBILITY
THROUGH PERFORMANCE

NOTICE OF ANNUAL GENERAL MEETING

('this Notice' or 'the Notice')

SASOL LIMITED

(Incorporated in South Africa)
Registration number 1979/003231/06
Sasol Ordinary Share codes: JSE: SOL NYSE: SSL
Sasol Ordinary ISIN codes: ZAE000006896 US8038663006
Sasol BEE Ordinary Share code: JSE: SOLBE1
Sasol BEE Ordinary ISIN code: ZAE000151817
('Sasol' or 'the Company')

Notice is hereby given that the forty-sixth Annual General Meeting of the Shareholders of Sasol Limited will be convened and held only by electronic communication by means of Sasol's electronic meeting platform on Friday, 14 November 2025 at 09:00 or any other adjourned or postponed time, as determined in terms of the Company's memorandum of incorporation (MOI), read with section 64 of the Companies Act 71 of 2008, as amended (the Companies Act) ('the Annual General Meeting' or 'AGM').

This document[1] is important and requires your immediate attention. Your attention is drawn to the notes at the end of this Notice, which contain important information with regard to participation in the AGM.

The holders of Sasol shares (being the Sasol Ordinary shares and the Sasol BEE Ordinary shares) (the Shareholders) and any persons who are not Shareholders, but who are entitled to exercise any voting rights in relation to the ordinary, special and non-binding advisory resolutions to be proposed at the AGM, and who are recorded as such at the record date, are entitled to attend, participate in and vote at the AGM in person or by proxy.

The record date by when persons must be recorded as Shareholders in the securities register of the Company in order to be entitled to receive this Notice is Friday, 3 October 2025. The record date in order to be recorded in the securities register as a Shareholder to be able to attend, participate in and vote at the AGM is Friday, 7 November 2025. The last date to trade in order to be recorded in the securities register as a Shareholder on the aforementioned record date is Tuesday, 4 November 2025.

The purpose of the AGM is for the following business to be transacted and considered, and if deemed fit, to pass, with or without amendment, the following ordinary, special and non-binding advisory resolutions in the manner required by the Company's MOI and the Companies Act, as read with the Listings Requirements of the exchange operated by JSE Limited (the JSE) (the Listings Requirements).

Ordinary resolutions, save to the extent expressly provided in respect of a particular matter contemplated in the Company's MOI or the Listings Requirements, shall require to be adopted with the support of more than 50% (fifty percent) of the voting rights of those persons present or represented by proxy at the AGM exercised on the ordinary resolution.

Special resolutions shall require to be adopted with the support of at least 75% (seventy-five percent) of the voting rights of those persons present or represented by proxy at the AGM exercised on the special resolution.

[1] This document is available in English only.

Part A – Presentation of the AFS, the remuneration report and the reports of the Audit Committee and Safety, Social and Ethics Committee

- To receive the published audited AFS of the Company and its subsidiaries (Group or Sasol Group), for the financial year ended 30 June 2025, together with the reports of the Directors, the Audit Committee and the independent auditor of the Company. The AFS of the Company for the financial years ended 30 June 2024 and 30 June 2025 can be obtained from the Sasol website at **www.sasol.com**. Summarised AFS for the financial year ended 30 June 2025 are included with this Notice.
- To receive the remuneration report for the financial year ended 30 June 2025, as required in terms of section 61(8)(a)(v) of the Companies Act, as set out on pages 135 to 166 of the 2025 Integrated Report, published and available on Sasol's website at **www.sasol.com**.
- To receive the report of the Safety, Social and Ethics Committee, supplemented by the information in relation to ESG as included in the 2025 Integrated Report for the financial year ended 30 June 2025, as required in terms of section 61(8)(a)(iv) of the Companies Act and Regulation 43 of the Companies Regulations, 2011 (the Regulations), as set out on pages 74 and 75 of the 2025 Integrated Report, published and available on Sasol's website at **www.sasol.com**.

Part B – Non-binding advisory resolutions

To vote on the non-binding advisory resolutions set out below as advisory votes numbers 1, 2 and 3 in the manner required by the King IV™ Report on Corporate Governance for South Africa, 2016 (King IV™), as read with the Listings Requirements.

1. Non-binding advisory resolution number 1

To endorse, on a non-binding advisory basis, the Company's remuneration policy as set out on pages 141 to 149 of the Company's Integrated Report for the year ended 30 June 2025.

Motivation for advisory endorsement

In terms of King IV™ and the Listings Requirements, an advisory vote should be obtained from Shareholders on the Company's remuneration policy. The vote allows Shareholders to express their views on the remuneration policy adopted but will not be binding on the Company.

In the event that at least 25% (twenty-five percent) of the voting rights exercised on this non-binding advisory resolution are against the remuneration policy, the Sasol Limited Board of Directors (the Board) commits to implementing the consultation process set out in the remuneration report read together with King IV™.

2. Non-binding advisory resolution number 2

To endorse, on a non-binding advisory basis, the implementation report of the Company's remuneration policy as set out on pages 150 to 166 of the Company's Integrated Report for the year ended 30 June 2025.

Motivation for advisory endorsement

In terms of King IV™ and the Listings Requirements, an advisory vote should be obtained from Shareholders on the implementation report of the Company's remuneration policy. The vote allows Shareholders to express their views on the extent of implementation of the Company's remuneration policy but will not be binding on the Company.

In the event that at least 25% (twenty-five percent) of the voting rights exercised on this non-binding advisory resolution are against the implementation report, the Board commits to implementing the consultation process set out in the remuneration report read together with King IV™.

3. Non-binding advisory resolution number 3

To endorse, on a non-binding advisory basis, Sasol's climate change mitigation and adaptation strategy and management approach, which supports the Paris Agreement, recognises the role of business in managing climate risks, enables opportunities that drive societal value and strengthens the Company's resilience in a responsible and balanced manner. This includes Sasol's optimised emissions reduction roadmap (ERR), as presented during the Company's 2025 Capital Markets Day, and its commitment to achieving its 30% greenhouse gas emissions reduction target by 2030 (comprising scope 1 and 2 emissions) and its net zero ambition by 2050, off a 2017 baseline, in a manner that will ensure the long-term sustainability of Sasol and the ability to create value for its stakeholders.

Unless the strategy and management approach towards climate change are materially changed, the resolution will remain in effect for a three-year period (2025–2028) within which Sasol will continue to report on progress towards achieving its targets outlined above in the Company's Integrated Report annually.

Motivation for advisory endorsement

Sasol remains committed to its greenhouse gas emissions reduction target of 30% by 2030 and its net zero ambition. Sasol's optimised ERR demonstrates the Company's ability to lower its carbon footprint while following a value-accretive transition in line with customers' demand for our products. In 2025, Sasol made key adjustments to the roadmap that maximise production from Secunda while improving emissions performance. These include expanding its renewable energy ambition from 1,2 to 2 GW to replace a greater portion of coal-based electricity with cleaner, cost-effective power; leveraging sustainable market mechanisms like carbon offsets and renewable energy certificates (RECs) to provide flexibility for emissions that are currently hard to abate; and optimising capital expenditure. In addition to the mitigation strategy, Sasol's climate adaptation response focuses on changing processes and behaviours to anticipate, prepare for, and respond to climate risks. Sasol's approach reflects a deliberate balance between decarbonisation, affordability, and the need to sustain operations and broader socio-economic commitments to ensure responsible value creation as the Company progresses toward a lower-carbon future. In light of this, the Board is seeking to confirm Shareholders' support of the Company's mitigation and adaptation strategy and approach to climate change and its optimised ERR. More detail on our environmental, social and governance strategy and implementation is available in our 2025 Integrated Report, which is available on the Company's website at **www.sasol.com**.

Part C – Ordinary resolutions

To consider and, if deemed fit, to approve, with or without amendment, the ordinary resolutions set out below, in the manner required by the MOI and the Companies Act, as read with the Listings Requirements:

4. Ordinary resolution number 1

To vote on the re-election, each by way of a separate vote, of the following Directors who are required to retire in terms of clause 22.2.1[2] of the Company's MOI and who are eligible and have agreed to stand for re-election[3]:

- Mr S Baloyi
- Mr MJ Cuambe
- Ms MBN Dube
- Dr M Flöel

[2] Clause 22.2.1 states that, "At the Annual General Meeting held in each calendar year 1/3 (one third) of the Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than 1/3 (one-third) (excluding those Directors appointed in terms of clause 22.4) shall retire from office". Clause 22.2.3 states that "... Retiring Directors may be re-elected, provided they are eligible."

[3] Brief biographies of the directors who have offered themselves for re-election, are included with this Notice.

The Nomination and Governance Committee and the Board have reviewed the composition of the Board against corporate governance and transformation requirements, and have recommended the re-election of Mr Baloyi, Mr Cuambe, Ms Dube and Dr Flöel. It is the view of the Board that the re-election of these directors will:

- provide continuity on the Board;
- enable the Company to responsibly maintain a mixture of business skills and experience relevant to the Company, and balance the requirements of transformation, continuity and succession planning;
- enable the Board to meet its targets with respect to gender and racial diversity; and
- enable the Company to comply with corporate governance requirements in respect of matters such as the balance of executive, non-executive and independent directors on the Board.

Information on the Company's corporate governance practices is available on pages 121 to 127 of the 2025 Integrated Report.

5. Ordinary resolution number 2

To vote on the election of Ms NX Maluleke who was appointed as independent, non-executive director by the Board with effect from 9 June 2025, to fill a vacancy in terms of clause 22.4.1 of the Company's MOI, and who will cease to hold office at the end of the AGM, unless she is elected at the AGM[4].

6. Ordinary resolution number 3

To vote on the appointment of KPMG Inc (KPMG), nominated by the Company's Audit Committee, as independent auditor of the Company and the Group for the financial year ending 30 June 2026, to hold office until the end of the next annual general meeting.

The Audit Committee is satisfied that the appointment of KPMG[5] will comply with the requirements of the Companies Act and the Regulations.

7. Ordinary resolution number 4

To vote on the election, each by way of a separate vote, of the members of the Audit Committee[6] of the Company to hold office until the end of the next annual general meeting, namely:

- Mr DGP Eyton
- Ms KC Harper
- Ms GMB Kennealy (Chair)
- Ms NX Maluleke (subject to her election as a director in terms of ordinary resolution number 2)
- Mr S Subramoney

The Board has reviewed the proposed composition of the Audit Committee against the requirements of the Companies Act and the Regulations[7], as well as the United States corporate governance requirements that apply to the Company, and has confirmed that the proposed Audit Committee will comply with the relevant requirements and has the necessary knowledge, skills and experience to enable the Committee to perform its duties in terms of the Companies Act. The Board recommends the election by Shareholders of the directors listed above as members of the Audit Committee to hold office until the end of the next annual general meeting.

[4] A brief biography of the director who have offered herself for election is included with this Notice.

[5] Ms S Loonat, KPMG practice number 900133-0000, is the lead engagement partner responsible for the audit.

[6] Brief biographies of these directors are included with this Notice.

[7] Sections 94(4) and 94(5) of the Companies Act read with Regulation 42.

NEDBANK GROUP LIMITED
Reg No. 1966/010630/06

NEDBANK GROUP

MINUTES OF THE 53rd ANNUAL GENERAL MEETING OF SHAREHOLDERS OF NEDBANK GROUP LIMITED ('NEDBANK GROUP' OR 'THE COMPANY') HELD ELECTRONICALLY VIA WEBCAST, TELECONFERENCE AND MICROSOFT TEAMS, ON FRIDAY, 22 MAY 2020, AT 08:30

1. **PRESENT**

6 shareholders present in person or by representation, representing 526 266 shares; and
73 participants' proxies received in favour of the Chairman, representing 400 053 890 shares.

Total shares represented, including proxies: 400 580 156 (79,79% of the shares of the total issued share capital of the company).

Directorate: V Naidoo (Chairman), MWT Brown (Chief Executive), HR Brody, BA Dames, NP Dongwana, EM Kruger, RAG Leith, PM Makwana, L Makalima, Dr MA Matooane, RK Morathi (Chief Financial Officer), Prof T Marwala, MC Nkuhlu (Chief Operating Officer) and S Subramoney.

Auditors: L Nunes (Deloitte & Touche) and F Mohideen (Ernst & Young Inc.)

Group Company Secretary: J Katzin.

Transfer Secretaries: Link Market Services South Africa Proprietary Limited, represented by G Edwards and M Mia.

85 visitors were in attendance via the webcast and teleconference.

2. **WELCOME**

The Chairman welcomed shareholders, directors, guests, advisers, staff members and members of the press to the 53rd annual general meeting (AGM) of the company. He noted that it was the company's first virtual AGM and that given the Covid-19 pandemic, the company's concern for the health and safety of all its stakeholders, and the statutory regulations which remained in place restricting gatherings of people, shareholders had been advised via the Stock Exchange News Service (SENS) on Monday, 19 May 2020 that they would not be able to attend the meeting in person. He thanked the shareholders for their understanding and co-operation in this regard.

3. **NOTICE OF MEETING**

The statutorily required notice of the meeting dated 20 April 2020, having been circulated to all shareholders on that date, was taken as read.

13. **ORDINARY RESOLUTION 5 - PLACING THE AUTHORISED BUT UNISSUED ORDINARY SHARES UNDER THE CONTROL OF THE DIRECTORS**

The authority granted to the directors to issue the unissued ordinary shares of the company expired at this meeting. The Chairman conveyed that, in the directors' opinion, it was desirable that the unissued ordinary shares should remain under the control of the directors. This authority would be limited to 12 426 338 (twelve million four hundred and twenty-six thousand three hundred and thirty-eight) shares, being 2,5% of the number of ordinary shares in issue at 1 January 2020, was further limited to existing contractual obligations and issuances that arose under the Nedbank Group (2005) Share Option, Matched share and Restricted Share schemes, and would be valid until the next annual general meeting.

Accordingly, the Chairman proposed that authority be granted to the directors to issue ordinary shares in the share capital of Nedbank Group, on such terms and conditions and at such times as they deemed fit, subject to the provisions of the proposed resolution, the Companies Act, the Banks Act and the Listings Requirements of the JSE and put the resolution to the meeting.

Resolution Number 5:

'Resolved that the board be and is hereby authorised, as it in its discretion thinks fit, to issue up to 12 426 338 ordinary shares of R1,00 each in the share capital of the company, subject to the provisions of the Companies Act, 71 of 2008, the Banks Act, 94 of 1990 (as amended), and the JSE Listings Requirements.'

14. **ORDINARY RESOLUTIONS 6.1 AND 6.2 – ADOPTING AND PUBLICLY DISCLOSING AN ENERGY POLICY; AND REPORTING ON THE COMPANY'S APPROACH TO MEASURING, DISCLOSING AND ASSESSING ITS EXPOSURE TO CLIMATE-RELATED RISKS**

The Chairman provided an overview of Nedbank's approach to climate related risks, noting that Nedbank Group was committed to playing a leading role in addressing climate change in ways that were sensitive to the local socioeconomic context and climate vulnerability.

Banks played a central role in driving sustainable socioeconomic development for the benefit of all stakeholders by providing capital where it was needed most. Banks' financing choices could serve to enable the necessary transition to a low-carbon economy and contribute to building climate resilience through the financing of adaptation measures.

Given this, Nedbank was committed to appropriately aligning its strategy, policies and mandates with the objectives of the Paris Agreement. Accordingly, the bank had adopted a policy to inform the financing of activities related to thermal coal that would be publicly available from 22 April 2020, which policy included Nedbank's existing undertaking not to provide financing to any new coal-fired power station regardless of technology or country.

Nedbank would continue to engage with clients, shareholders, governments, relevant non-governmental organisations and thought-leaders to ensure it continued to play an important role in leading the energy transition through innovative solutions and appropriate financial choices.

The Chairman then put the resolutions to the meeting noting that each resolution would be dealt with separately.

14. **ORDINARY RESOLUTIONS 6.1 AND 6.2 – ADOPTING AND PUBLICLY DISCLOSING AN ENERGY POLICY; AND REPORTING ON THE COMPANY'S APPROACH TO MEASURING, DISCLOSING AND ASSESSING ITS EXPOSURE TO CLIMATE-RELATED RISKS cont.**

Resolution Number:

6.1 'Resolved that the company will adopt and publicly disclose on its website, by no later than April 2021, an energy policy aimed at playing our part in enabling the transformation over time of the energy system by making finance flows consistent with low-emission and climate-resilient development, in a manner that supports the stability of the energy systems of the countries in which we operate. The policy will include a framework on the financing of fossil-fuel-related activities (including thermal coal, oil, and gas) and will also include commitments to intensify our financing of alternative energy solutions such as renewable energy and other technologies as they emerge.'

6.2 'Resolved that the company will report to shareholders, at a reasonable cost and omitting confidential and proprietary information, on its approach to measuring, assessing and disclosing its financial exposure to climate-related risks (transition and physical) by no later than April 2021. This will inform shareholders of the group's journey in assessing its lending activities, investment practices and own operations to climate-related risks and opportunities over time as standards, guidelines and principles on climate risk mature, including appropriate alignment to global best practices including, inter alia, the Taskforce on Climate-related Financial Disclosure (TCFD).

'In relation to measuring and disclosing its financial exposure to climate-related risks, Nedbank resolves to disclose its exposure to oil- and gas-related activities as a percentage of total advances, as part of the 2020 year-end reporting cycle to stakeholders by no later than April 2021. This builds on the group's existing disclosure of its exposure to thermal-coal-related activities that is available in the Nedbank Group 2019 Integrated Report published on 22 April 2020.'

15. **ADVISORY ENDORSEMENTS 7.1 AND 7.2 ON A NON-BINDING BASIS OF THE NEDBANK GROUP REMUNERATION POLICY AND THE REMUNERATION IMPLEMENTATION REPORT**

In accordance with the principles of King IV, shareholders were requested to endorse Nedbank Group's Remuneration Policy and the implementation thereof. The meeting noted that the votes on these advisory endorsements were non-binding, but the board would take cognisance of the outcome of the vote when considering its Remuneration Policy in future.

The Chairman put the proposal to the meeting for shareholders to endorse, through non-binding advisory votes, the Remuneration Policy and the Remuneration Implementation Report noting that the endorsements would be dealt with individually.

Advisory Endorsement Number:

7.1 'To endorse through a non-binding advisory vote the company's Remuneration Policy (excluding the remuneration of the non-executive directors for their services as directors and members of the board committees), as set out in the Remuneration Report contained in the summary consolidated annual financial statements.'

7.2 'To endorse through a non-binding advisory vote the company's Remuneration Implementation Report as set out in the Remuneration Report contained in the summary consolidated annual financial statements.'

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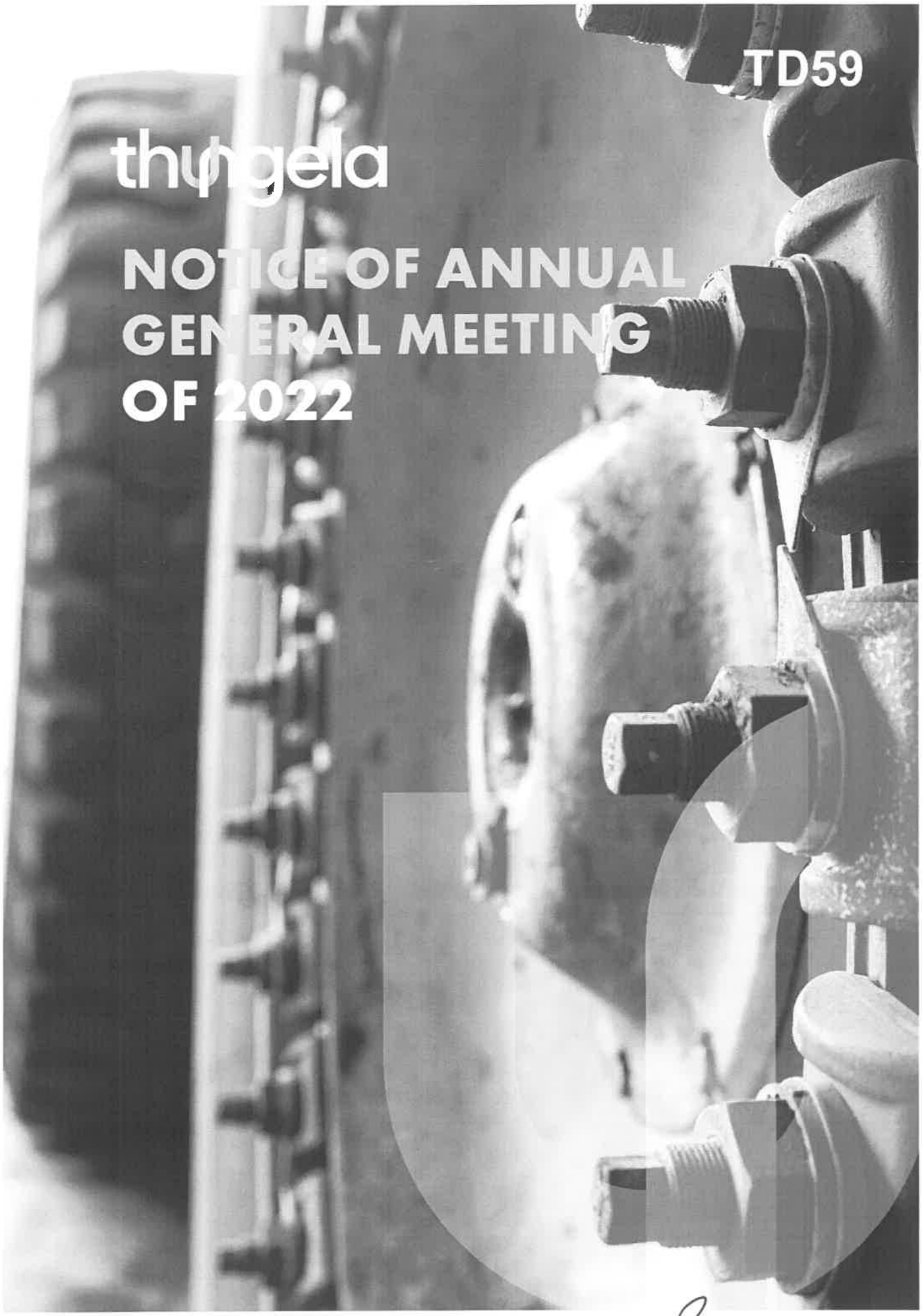
NOTICE OF ANNUAL GENERAL MEETING OF 2022



ABOUT THUNGELA

Thungela, a Zulu word which means 'to ignite', is a leading South African thermal coal business, focused exclusively on thermal coal production. It is one of the largest pure-play producers and exporters of thermal coal in South Africa based on aggregate Coal Reserves and marketable coal production.

The Group owns interests in, and produces its thermal coal predominantly from seven mining operations, namely Goedehoop, Greenside, Isibonelo, Khwezela, AAIC (operating the Zibulo colliery), Mafube Coal Mining (operating the Mafube colliery) and Butsanani Energy (owning the independently operated Rietvlei colliery) which consist of both underground and opencast mines located in the Mpumalanga province of South Africa.

Thungela's operations are among the highest quality thermal coal mines in South Africa by calorific value.

Thungela, through AAIC, also holds a 50% interest in Phola, which owns and operates the Phola Coal Processing Plant, and a 23% indirect interest in RBCT. The Richards Bay Coal Terminal is one of the world's leading coal export terminals, with an advanced 24-hour operation and a design capacity of 91 Mtpa.

Thungela is committed to operating in a sustainable way to ignite value for a shared future, for the benefit of the communities in which it operates, its employees, shareholders and society as a whole.

FORWARD-LOOKING STATEMENTS AND THIRD-PARTY INFORMATION

This document includes forward-looking statements. All statements other than statements of historical facts included in this document, including, without limitation, those regarding Thungela's financial position, business, acquisition and divestment strategy, dividend policy, plans and objectives of management for future operations (including development plans and objectives relating to Thungela's products, production forecasts and Resource and Reserve positions), are forward-looking statements. By their nature, such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of Thungela or industry results to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. The Group assumes no responsibility to update forward-looking statements in this document except as required by law.

The information contained within this announcement is deemed by the Group to constitute inside information as stipulated under the market abuse regulation (EU) no. 596/2014 as amended by the market abuse (amendment) (UK MAR) regulations 2019. Upon the publication of this announcement via the regulatory information service, this inside information is now considered to be in the public domain.

THUNGELA'S 2021 REPORTING SUITE

This report forms part of our overall suite of reporting documents for the year ended 31 December 2021, all of which should be read together. Our 2021 reporting suite includes the documents as detailed below.

INTEGRATED ANNUAL REPORT

- Balanced assessment of our approach to creating and sustaining value.
- Detailed assessment of our Coal Resources and Coal Reserves in line with the South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves, 2016 (the SAMREC Code).
- Developed in line with the <IR> Framework, the Companies Act of South Africa, King IV, the JSE Listings Requirements, the UK Listing Rules and the UK Disclosure Guidance and Transparency Rules.

ANNUAL FINANCIAL STATEMENTS

- Detailed understanding of the Group's financial and operational performance, including Pro forma financial information.
- Prepared in accordance with IFRS, the Companies Act of South Africa, King IV, the JSE Listings Requirements, the UK Listing Rules and the UK Disclosure Guidance and Transparency Rules.

ENVIRONMENTAL, SOCIAL AND GOVERNANCE REPORT

- Detailed disclosure of the key environmental, social and governance elements that could have a material impact on our performance and business if not effectively managed.
- Prepared in accordance with the core requirements of the GRI requirements, and internal safety and sustainable development indicators.

Various acronyms, abbreviations and measures used throughout our 2021 reporting suite have been defined in the documents listed above.

For more information, visit www.thungela.com/investors/annualreporting

thungela

Responsibly creating value together for a shared future

CONTENTS

NOTICE OF ANNUAL GENERAL MEETING CONTINUED

3. Ordinary resolution number 3: Election of Audit Committee members

(Comprising separate ordinary resolutions numbered 3.1 to 3.3)

To elect, by way of separate ordinary resolutions, the audit committee consisting of independent non-executive directors in terms of section 94(4) of the Companies Act of South Africa and appointed in terms of section 94(2) to perform the duties and responsibilities stipulated in section 94(7) of the Companies Act of South Africa. The independent non-executive directors, each being eligible, offer themselves for re-election. A brief curriculum vitae for each member is attached as Annexure 2 on pages 68 and 69 of this document.

Ordinary resolution number 3.1

RESOLVED that Ms KW Mzondeki, who is an independent non-executive director, be and is hereby re-elected, with effect from 24 May 2022, as a member of the audit committee, subject to the passing of ordinary resolution 2.2.

Ordinary resolution number 3.2

RESOLVED that Mr TML Setiloane, who is an independent non-executive director, be and is hereby re-elected, with effect from 24 May 2022, as a member of the audit committee, subject to the passing of ordinary resolution 2.3.

Ordinary resolution number 3.3

RESOLVED that Mr BM Kodisang, who is an independent non-executive director, be and is hereby re-elected, with effect from 24 May 2022, as a member of the audit committee, subject to the passing of ordinary resolution 2.4.

4. Non-binding ordinary resolution number 4: Approval of the remuneration policy

Shareholder approval is sought for the Company's remuneration policy and implementation thereof by way of separate non-binding advisory votes. The detailed remuneration policy, for which approval is being sought, is included as Annexure 3 on pages 70 to 85 of this document.

Non-binding advisory resolution number 1

RESOLVED that the Company's remuneration policy be and is hereby approved by way of a non-binding advisory vote, as recommended by the King Code of Governance Principles for South Africa 2016 (King IV).

Non-binding advisory resolution number 2

RESOLVED that the implementation of the Company's remuneration policy be and is hereby approved by way of a non-binding advisory vote, as recommended by King IV.

5. Ordinary resolution number 5: General authority for directors to allot and issue ordinary shares

RESOLVED that the unissued shares in the Company, limited to 5% of the number of shares in issue at the date of this Notice (being 136,311,808 shares), be and are hereby placed under the control of the directors until the next AGM and that the directors be and are hereby authorised to issue any such shares including options in respect thereof or convertible securities that are convertible into an existing class of equity securities, where applicable as they may deem fit, subject to the requirements of the Companies Act of South Africa, the MoI, and the provisions of the JSE Listings Requirements and the UK Listing Rules.

6. Ordinary resolution number 6: Authorisation to sign documents to give effect to resolutions

RESOLVED that any one director or the Company secretary be and are hereby authorised to do all such things and sign all such documents and take all such actions as they consider necessary to give effect to the resolutions set out in this notice of AGM.

SPECIAL RESOLUTIONS

Percentage of voting rights – special resolutions

Special resolutions numbered 1 to 3, contained in this Notice, require approval of a minimum of 75% (seventy-five percent) of the votes exercised on the resolutions by the shareholders present or represented by proxy at the AGM in order for the resolutions to be adopted.

1. Special resolution number 1: General authority to acquire the Company's own ordinary shares

RESOLVED that the Company and its subsidiaries be granted an authority under the Companies Act of South Africa and a general authority in terms of the JSE Listings Requirements to repurchase or purchase, as the case may be (collectively, "repurchase") of the ordinary shares issued by the Company (but not exceeding 15% of the Company's total issued ordinary shares in any one financial year), from any person, upon such terms and conditions and in such amounts as the directors of the Company or directors of the subsidiary (as the case may be) may from time to time determine, subject to compliance with the applicable provisions of the Companies Act of South Africa, the MoI and the Listings Requirements of the JSE (as regards repurchases effected on the JSE) or the listing rules applicable on any other exchange on which the Company's ordinary shares are listed (as regards repurchases effected on such exchanges, and only to the extent applicable) (each as presently constituted and as amended from time to time).

EXPLANATORY NOTES

Ordinary resolution number 1: Re-appointment of independent external auditor

To re-appoint PricewaterhouseCoopers Inc. (PwC) as independent external auditor of the Company and that Mr Andries Rossouw be re-appointed as the individual designated auditor, to hold office until the conclusion of the next AGM in terms of section 90(1) of the Companies Act of South Africa. The audit committee has evaluated the independence, experience and effectiveness of both PwC and Mr Rossouw and has concluded that both the firm and the individual designated auditor are independent of the Company in accordance with section 94(8) of the Companies Act of South Africa.

In compliance with paragraph 3.84(g)(iii) of the JSE Listings Requirements the audit committee obtained and considered all information listed in paragraph 22.15(h) of the JSE Listings Requirements in its assessment of the suitability of PwC as well as Mr Rossouw for re-appointment.

The audit committee concluded that, based on the outcome of the inspection by the Independent Regulatory Board of Auditors of PwC, no matters were raised that negatively impacted the suitability of PwC and Mr Rossouw for re-appointment as external auditor and individual designated auditor, respectively, of the Company.

There are no current pending or finalised legal or disciplinary processes which affect the suitability of PwC or Mr Rossouw for re-appointment as the Company's external auditor and individual designated auditor. Further information on the execution of the duties of the audit committee is set out in the report of the audit committee, contained in the Annual financial statements which are available at www.thungela.com/investors/results.

In compliance with paragraph 3.86 of the JSE Listings Requirements, the audit committee considered and satisfied itself that:

- PwC, the independent external auditor, is accredited as such on the JSE List of Auditors and Accounting Specialists
- Mr Andries Rossouw the designated auditor does not appear on the JSE List of Disqualified Individual Auditors.

Ordinary resolution number 2: Re-election of retiring directors

These directors are retiring due to the requirement in the MoI for all newly appointed directors to retire and be eligible for re-election at the first AGM of the Company.

Shareholders are requested to consider and, if deemed fit, to re-elect these retiring directors as members of the board of the Company by way of passing the separate ordinary resolutions as set out in ordinary resolutions number 2.1 to 2.7. Brief résumés in respect of each director offering themselves for re-election as directors of the Company are attached as Annexure 2 on pages 68 and 69 of this document and are also available at www.thungela.com/who-we-are

Ordinary resolution number 3: Election of audit committee members

In terms of Regulation 42 of the Companies Regulations, 2011 read with section 94(5) of the Companies Act of South Africa, at least one-third of the members of the Company's audit committee must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

The board has determined that each of the members standing for election is independent, and that they possess the required qualifications, skills and experience as contemplated in Regulation 42 of the Companies Regulations, 2011 read with section 94(5) of the Companies Act of South Africa, and collectively, they have sufficient qualifications and experience to fulfil their duties as contemplated in section 94(7) of the Companies Act of South Africa.

All of the above resolutions are subject to the re-election of the directors pursuant to ordinary resolutions number 2.2, 2.3 and 2.4 respectively.

Ordinary non-binding resolution number 4: Approval of the remuneration policy

In accordance with King IV, shareholder approval is sought for the Company's remuneration policy and implementation thereof by way of separate non-binding advisory votes. The non-binding votes enable shareholders to express their views on the Company's remuneration policy and on the implementation thereof.

In the event that the remuneration policy or the implementation report, or both have been voted against by 25% or more of the voting rights exercised by shareholders in respect of these non-binding advisory votes, the board will actively engage with shareholders to address and conciliate the substantiating objections and concerns and to ameliorate the policy and/or report as appropriate, taking cognisance of the shareholder feedback and proposals resulting from the engagement and as approved by the board.

Ordinary resolution number 5: General authority for directors to allot and issue authorised unissued ordinary shares

In terms of clause 13 of the MoI, subject to the JSE Listings Requirements, the approval, by way of an ordinary resolution of shareholders is required for the allotment and issue of ordinary shares (including options in respect thereof or convertible securities that are convertible into an existing class of equity securities), where applicable which are fully paid up and freely transferable and only within the classes and to the extent that those securities have been authorised by or in terms of the MoI.

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AS YOU SOW

May 29, 2026 · Ryon Harms

As You Sow Condemns SEC's Proposal to Rescind Climate Disclosure Rule, Warns Legal Rationale Threatens All Investor Protections

FOR IMMEDIATE RELEASE

MEDIA CONTACT: Ryon Harms, ryon@asyousow.org, (310) 730-9407

EL CERRITO, CALIFORNIA – May 29, 2026 – *As You Sow*, the nation's leading shareholder representative, today condemned the SEC's formal proposal to rescind the previously approved climate-related disclosure rule, calling it the most damaging action in a systematic campaign to strip investors of the material information they need to evaluate risk.

"The climate disclosure rule is the single most important advance in corporate transparency in a generation," said **Danielle Fugere, President**

AS YOU SOW

sheets right now through catastrophic losses, supply chain disruptions, failing crops, and skyrocketing insurance premiums that are also destabilizing entire markets. Rescinding this rule doesn't make climate risk disappear. It makes it invisible to investors at precisely the moment they need the information most."

Prior to the rule being approved, thousands of commenters weighed in with $4.7 trillion in assets supporting the materiality of this information to their capital allocation decisions.

The SEC's rescission proposal does not merely eliminate climate disclosure requirements; it appears to rest on a substantially narrower interpretation of the SEC's disclosure authority than prior Commissions have adopted. It questions the Commission's authority to mandate disclosures outside traditional disclosure categories; significantly narrows the concept of materiality; and discounts investors need for comparability of reporting across companies. This reasoning could have implications extending well beyond climate disclosure and constrain future Commission efforts to require standardized disclosures addressing emerging risks.

AS YOU SOW

protect investors," said **Andrew Behar, CEO of *As You Sow***. "If this reasoning stands, the Commission could halt or prevent adoption of corporate disclosures on AI risk, cybersecurity threats, or any other issue that investors face today but Congress could not have foreseen ninety years ago."

The rescission is the latest in a series of actions by this SEC that have systematically limited the tools investors rely on to evaluate risk and hold companies accountable.

In November 2025, the SEC **announced it would no longer substantively review corporate no-action requests** under Rule 14a-8, abandoning its decades-long role as a neutral arbiter in the shareholder proposal process. Companies were left to make unilateral exclusion decisions, forcing shareholders into costly federal litigation simply to get their proposals on a ballot. *As You Sow* **filed a federal lawsuit against Chubb** as a direct result of this abdication and joined ICCR in suing the SEC for making changes to Rule 14a-8 in violation of the APA.

In January 2026, the SEC reversed decades of precedent by **barring most shareholders from filing exempt solicitations on EDGAR**, the SEC's public filing system. These filings had

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proposals with other investors before a vote. In response, *As You Sow* helped **launch Proxy Open Exchange** at **proxyopenexchange.org**, an open-access platform that enables all shareholders to publish the proxy memos the SEC no longer allows on EDGAR.

Also in January 2026, SEC Chairman Paul Atkins signaled his intention to weaken Regulation S-K, the foundational disclosure framework governing risk factors, executive compensation, legal proceedings, and governance structures. *As You Sow* **submitted a formal comment letter** defending the framework and warning that reducing these requirements would impair ability for investors to evaluate risk, hold companies accountable, and make informed capital allocation decisions.

"Every one of these actions points in the same direction: making public companies as opaque as private ones," said Behar. "A free market requires the free flow of information which allows investors to make educated decisions. This latest proposal is one more significant step toward dismantling the transparency infrastructure that makes U.S. capital markets the most trusted in the world."

# # #

AS YOU SOW

promoting environmental and social corporate responsibility. *As You Sow* addresses a range of issues that affect shareholder value including climate change, ocean plastics, toxins in the food system, biodiversity, racial justice, and workplace diversity. See *As You Sow*'s **shareholder resolution tracker**.

NEXT

Proxy Open Exchange Surpasses 100 Postings, Far Exceeding SEC's EDGAR Exempt Solicitation Submissions

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